TEXAS REGISTER

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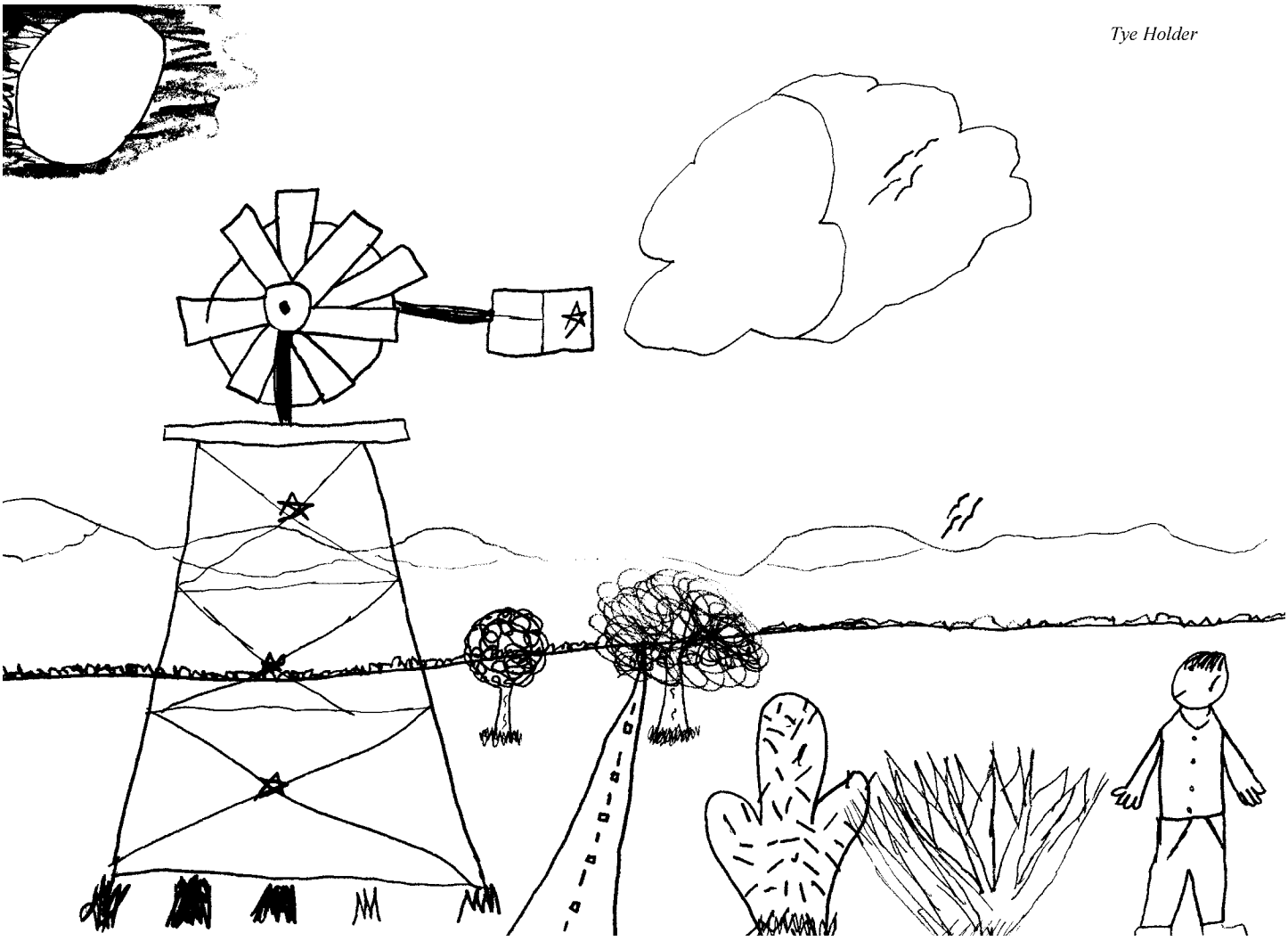

Tye Holder

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for August 15, 2008

Appointed to the Public Utility Commission of Texas, effective August 18, 2008, for a term to expire September 1, 2009, Donna L. Nelson of Austin (replacing Paul Hudson of Austin who resigned).

Appointed to the Public Utility Commission of Texas, effective September 2, 2008, for a term to expire September 1, 2011, Kenneth W. Anderson, Jr. of Dallas (replacing Julie Parsley of Austin who resigned).

Appointed to the Guadalupe-Blanco River Authority Board of Directors for a term to expire February 1, 2013, Myrna Patterson McLeroy of Gonzales (Ms. McLeroy is being reappointed).

Appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2013, Frank Bryan, Jr. of Austin (replacing Dora Ochoa-Rutledge of San Antonio who resigned).

Appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2013, Shari Waldie of Fredericksburg (replacing Mary Thompson of Celina whose term expired).

Appointed to the Texas Board of Physical Therapy Examiners for a term to expire January 31, 2013, Karen L. Gordon of Port O'Connor (Ms. Gordon is being reappointed).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2013, Benjamin Norris of Elm Mott (replacing Ronald J. Ensweiler of Dallas whose term expired).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2013, Amy Trost of Seguin (replacing Kenneth Earl of Orange whose term expired).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2013, James F. Leffingwell of Arlington (replacing Jerome Kosoy of Houston whose term expired).

Rick Perry, Governor

TRD-200804527

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Appointments

Appointments for August 21, 2008

Appointed to the State Seed and Plant Board for a term to expire October 6, 2008, Nick Bamert of Muleshoe (replacing Joe Crane of Bay City whose term expired).

Appointed to the State Seed and Plant Board for a term to expire October 6, 2008, Kelly Book of Bastrop (Ms. Book is being reappointed).

Appointed to the State Seed and Plant Board for a term to expire October 6, 2009, Robert Wright of Shallowater (replacing Ellen Peffley of Lubbock whose term expired).

Appointed to the State Seed and Plant Board for a term to expire October 6, 2009, David Baltensperger of College Station (replacing Mark Hussey of Bryan whose term expired).

Appointed to the State Seed and Plant Board for a term to expire October 6, 2009, Aubrey Allison of Buchanan Dam (Dr. Allison is being reappointed).

Appointed to the Select Commission on Higher Education & Global Competitiveness, pursuant to HCR 159, 80th Legislature, Regular Session, for a term to expire November 1, 2008, Fred W. Heldenfels, IV of Austin (replacing Robert W. Shepard of Harlingen who resigned).

Appointments for August 22, 2008

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2011, Lourdes M. Cuellar of Houston (replacing Russell Tolman of Draper whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2011, James A. Endicott, Jr. of Harker Heights (Mr. Endicott is being reappointed).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2013, Eric W. Ford of Lubbock (replacing Patricia Starck of Missouri City whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2013, Ayeez A. Lalji of Sugar Land (replacing Jimmie Mason of Lubbock whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2013, Elva LeBlanc of Fort Worth (Dr. LeBlanc is being reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2009, Anthony Odiorne of Wichita Falls (Mr. Odiorne is being reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2009, Olen Underwood of Willis (Judge Underwood is being reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2010, Knox Fitzpatrick of Dallas (Mr. Fitzpatrick is being reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2010, Jon H. Burrows of Temple (Judge Burrows is being reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2010, B. Glen Whitley of Hurst (Mr. Whitley is being reappointed).

Appointed to the Task Force on Indigent Defense as Ex-Officio Member, Sherry Radack of Houston (Judge Radack is being reappointed).

Appointed to the Task Force on Indigent Defense as Ex-Officio Member, F. Alfonso Charles of Longview (replacing Judge Orlinda Naranjo of Austin who is no longer a County Judge).

Rick Perry, Governor

TRD-200804620

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Executive Order

RP 68

Relating to the creation of the Blue Alert Program.

WHEREAS, law enforcement officers protect and serve the people of Texas; and

WHEREAS, those same law enforcement officers face possible death or serious injury at the hands of violent criminals; and

WHEREAS, when called upon, the people of Texas offer their support and assistance to law enforcement officers in many effective ways;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Creation. The Blue Alert Program is hereby created as a means to speed the apprehension of violent criminals who kill or seriously injure local, state or federal law enforcement officers.

Purpose. The Blue Alert Program is a cooperative effort between the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TxDOT), the Governor's Division of Emergency Management (GDEM), broadcasters, private companies, associations and the general public. Using media broadcasts and TxDOT's dynamic sign system, each Blue Alert will blanket the state with information identifying the vehicle of the suspected assailant of a law enforcement officer, thus hindering the suspect's ability to flee the state, facilitating the suspect's speedy capture and helping to eliminate the threat the suspect would otherwise pose to Texas communities and other law enforcement personnel.

Activation Criteria. All the following criteria must be met for activation of a Blue Alert. A law enforcement officer must have been killed or seriously injured by an assailant. The investigating law enforcement agency must determine that the assailant poses a serious risk or threat to the public and other law enforcement personnel. A detailed description of the assailant's vehicle, vehicle tag or partial tag must be available for broadcast to the public. The investigating law enforcement agency or jurisdiction must submit a Blue Alert recommendation to GDEM.

Blue Alert Program Details. Upon activation, the identifying vehicle information will be displayed across the state via media broadcasts and TxDOT's dynamic message signs. DPS and GDEM will recruit Blue Alert partners among public and commercial television and radio broadcasters, private commercial entities, local, state, and federal government entities, and any others who can help spread information about the assailant. Blue Alerts will also instruct individuals with information to contact local law enforcement agency via 911. Blue Alerts will be terminated upon the apprehension of the assailant, upon evidence the assailant has left the state or a determination that the alert is no longer effective in apprehending the assailant.

The Public. The keen eyes of the public are key to the success of the Blue Alert program. After a Blue Alert has been issued, the public is encouraged to be on the look-out for the assailant and to report any information to law enforcement via 911.

Termination. Any Blue Alert may be cancelled by the reporting law enforcement agency or by the director of GDEM acting as the statewide coordinator of the Program.

This executive order is effective immediately and shall remain in effect and in full force until modified, amended, rescinded, superseded by me or by a succeeding Governor.

Given under my hand this the 18th day of August, 2008.

Rick Perry, Governor

TRD-200804526

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Proclamation 41-3156

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that the severe storms and flooding that occurred August 18, 2008, and continuing, have caused a disaster in Starr and Wichita Counties, in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of August, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200804619

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0734-GA

Requestor:

The Honorable Kenneth Magidson

Harris County District Attorney

1201 Franklin Street, Suite 600

Houston, Texas 77002

Re: Authority of a district attorney to restrict the carrying of a firearm into a courtroom by an assistant district attorney who holds a concealed handgun license (RQ-0734-GA)

Briefs requested by September 22, 2008

RQ-0735-GA

Requestor:

The Honorable Warren Chisum

Chair, Committee on Appropriations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether an educational facility accredited by a member of the Texas Private School Accreditation Commission is exempt under that portion of section 42.041(b)(7), Human Resources Code, that provides an exemption for an education facility accredited by the Texas Education Agency (RQ-0735-GA)

Briefs requested by September 26, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200804657
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 27, 2008

♦ ♦ ♦

Opinion

Opinion No. GA-0655

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether the Higher Education Coordinating Board's standard method of calculating high school grade point averages must be followed by independent school districts (RQ-0716-GA)

S U M M A R Y

Section 51.807 of the Texas Education Code provides that the Texas Higher Education Coordinating Board (the "THECB") shall adopt rules establishing a standard method for computing a student's high school grade point average, and such method must be used to calculate the grade point average of a student applying as a first-time freshman for admission to a general academic teaching institution beginning with admission for the 2009 fall semester. Section 28.0252 authorizes the Commissioner of Education to adopt a standard method to compute a student's high school grade point average and requires school districts to use that method, unless it conflicts with the THECB's method. The standard method established by the THECB must be used to calculate a student's grade point average for purposes of determining eligibility for university admission under subchapter U, chapter 51, regardless of whether the Commissioner has developed a standard method as permitted under section 28.0252(a) of the Texas Education Code.

Because section 51.807 does not suggest an intention by the Legislature to make the THECB's standard method apply retroactively, and because there is a presumption against retroactive application of both statutes and agency rules, the THECB's standard method should be applied on a prospective basis only.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200804658
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 27, 2008

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.33

The Texas Ethics Commission proposes new §22.33, relating to how political expenditures are attributable for purposes of the expenditure limits set by the Judicial Campaign Fairness Act (JCFA).

The JCFA provides for voluntary political expenditure limits applicable to certain judges and certain judicial candidates. The limits apply to "each election in which the candidate is involved." However, the statute does not provide a method for attributing the expenditure to a particular election. Section 22.33 would provide that an officeholder expenditure is attributed to the next election in which the officeholder is a candidate, and a campaign expenditure is attributed to the election for which the expenditure is made.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new §22.33 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §22.33 affects §253.168 of the Election Code.

§22.33. Expenditure Limits of the Judicial Campaign Fairness Act.

For purposes of the expenditure limits prescribed by §253.168 of the Election Code:

(1) an officeholder expenditure is attributed to the next election in which the officeholder is a candidate that occurs after the expenditure is made; and

(2) a campaign expenditure is attributed to the election for which the expenditure is made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804473
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.163

The Texas Department of Agriculture (the department) proposes an amendment to §19.163, concerning quarantine implementation for the Diaprepes root weevil, *Diaprepes abbreviatus* (L). The proposed amendment imposes no new requirements, but specifies existing requirements for entry of a quarantined article from a quarantined area outside Texas. These requirements titled Diaprepes Root Weevil Action Plan, are posted on the department's website under Pest and Disease Alerts, and the Florida Department of Agriculture and Consumer Services

uses these guidelines to certify the quarantined articles for shipment to Texas. However, some Florida nurserymen mentioned they were unaware of the guidelines and asked the department to include these guidelines in the quarantine so that quarantined articles could be treated in a timely manner and a shipment delay avoided. The amendment specifies treatment requirements and restrictions for the field-grown and container-grown quarantined articles and provides an authorized representative of the state of origin with the option of certifying a shipment using a phytosanitary certificate or a phytosanitary permit. The amendment also clarifies that treatment for the Diaprepes root weevil is a prerequisite for issuance of a phytosanitary document. The proposed amendment does not add any new entry requirements for the quarantined articles. It summarizes the guidelines already in use and directs a nursery or a shipper to contact the state of origin authority for certification.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the proposed new sections are in effect, there is no anticipated fiscal impact on state or local government as a result of administration and enforcement of the sections.

Mr. Nilakhe has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit of adopting this amendment will be an immediate access to the information required for shipping quarantined articles from the quarantined area. The amendment will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the amendment because it imposes no new requirements.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; §71.003, which authorizes the department to establish quarantines around pest-free areas; and §71.005, which authorizes the department to prevent the movement of quarantined articles or to establish safeguards that allow the movement of such articles.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.163. Quarantine Implementation.

(a) Movement of a quarantined article from a quarantined area into or through a non-quarantined area is prohibited, except as provided in paragraphs (1) and (2) of this subsection.

(1) (No change.)

(2) Exceptions. The following quarantined articles are excepted from the provisions of this section:

(A) a quarantined article from a quarantined area outside Texas:

(i) a field-grown quarantined article must be:

(I) sprayed within 14 days of the shipment with an insecticide approved by the department; and

(II) shipped either bare-rooted, or repotted with sterile and soil-less potting media within seven days of the shipment; and

(III) a ball-and-burlap quarantined article is prohibited;

(ii) a container-grown quarantined article must be:

(I) grown in a secure greenhouse to prevent infestation by the quarantined pest; or

(II) sprayed within 14 days of the shipment with an insecticide approved by the department; and

(III) a drench treatment approved by the department applied within 30 days of the shipment, or an insecticide approved by the department is incorporated into the potting mix.

(iii) a quarantined article must be accompanied by a phytosanitary certificate or a phytosanitary permit issued by an authorized inspector of the state of origin, provided the article is treated as prescribed by the department and is actually free of the quarantined pest upon entry into Texas. A nursery may enter into a compliance agreement with the state of origin to treat and handle the quarantined article as prescribed by the department.

(B) (No change.)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804612
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 463-4075

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SUBCHAPTER W. RED PALM MITE QUARANTINE

4 TAC §§19.600 - 19.603

The Texas Department of Agriculture (the department) proposes new §§19.600 - 19.603, concerning a quarantine for the red palm mite, *Raoiella indica* Hirst. The new sections are proposed to prevent introduction of red palm mite into Texas. The red palm mite was first detected in the continental United States on December 3, 2007, in Palm Beach County, Florida. Since then the mite has spread to three additional Florida counties. As of July 21, 2008, it was detected in 120 residential properties and two nurseries in Florida. To ensure only mite-free palms are shipped into Texas, the new sections require the Florida Department of Agriculture and Consumer Services, Division of Plant Industry (DPI) to inspect the red palm mite host plants before shipment and provide mite-free phytosanitary certification. Alternatively, nurseries can enter into a compliance agreement with the DPI to follow a prescribed treatment plan and ship mite-free plants using a stamp.

The red palm mite is about 1/100th of an inch in length, bright red, and is barely visible with the naked eye. It feeds on leaves

of 32 species of palms, bananas, gingers, etc. and causes localized yellowing of leaves followed by tissue death. Heavy infestation can cause significant loss of the foliage. The mite is not known to occur in Texas and it poses a serious threat to the state's palm nurseries and to residential properties, shopping malls, businesses, and other areas where palms are used for landscaping. Although DPI is encouraging nurseries handling the mite host plants to enter into the DPI-established compliance agreement, there is no assurance all nurseries will do so. Furthermore, the quarantine would also deter residents and tourists from transporting the mite-infested host plants from infested to non-infested areas. Inspection of plants by DPI prior to shipment, or shipment of plants under the compliance agreement provision, would ensure shipments to be free of the mites. Consequently, the department filed a red palm mite emergency quarantine, new §§19.600 - 19.603, on July 8, 2008, which was published in the *Texas Register* on July 25, 2008 (33 TexReg 5829) and is now in effect. The quarantine requirements proposed in new §§19.600 - 19.603 are identical to the emergency quarantine except that a treatment also would be required as a prerequisite for issuance of a phytosanitary certificate. The proposed quarantine takes necessary steps to prevent the artificial introduction of the red palm mite into Texas.

New §19.600 defines the quarantined pest. New §19.601 designates the infested areas subjected to the quarantine. New §19.602 lists the articles subject to the quarantine. New §19.603 prescribes requirements for movement of the quarantined articles from the quarantined area to Texas.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Mr. Nilakhe also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to prevent introduction of the red palm mite into Texas. The introduction of the red palm mite into Texas could result in a substantial economic loss to the state's palm nurseries and to residential properties, shopping malls, businesses, and other areas where palms are used for landscaping. The treatment cost to control the mites will be borne by Florida nurseries shipping the mite host plants, primarily palms, to Texas. In addition to the red palm mite, Florida palms also are damaged by other mite species, and application of treatments to control these mites is commonly practiced. Consequently, the cost to control the red palm mite would be reduced significantly since some of these treatments also would control the red palm mite. DPI's cost for inspection and issuance of a phyosanitary certificate will be borne by the Florida nurseries. DPI does not charge a fee to enter into a compliance agreement with a nursery/shipper for issuance of a stamp; however, it charges $50 and the mileage cost for issuance of a phytosanitary certificate. That charge is not imposed by the department, but by the DPI, and the department has no control over the cost imposed by the DPI. A nursery may consider this cost as an overhead, or may recouperate it by adding to the relevant shipment, by distributing over all the shipments, or by some other means. If a Florida nursery opts to recouperate the certification cost, fewer than 100 Texas small businesses and micro-businesses which import Florida palms might experience a slight increase in the palm prices. However, it is not possible to quantify such an increase because of different size of nurseries, different volume of shipments, various species and sizes of palms shipped, price variation between palm species, nursery-specific pest management practices employed, nursery- specific management decisions, etc. If a nursery opts to add the phytosanitary certificate cost such as $75 to a small shipment, such as five palm plants, it would have a greater negative economic impact on micro-businesses than small businesses. Furthermore, statistics on small versus large shipment of palms is not available. Because the cost of a phytosanitary certificate is set by the DPI in Florida, the department is not able to provide a viable alternative to minimize the costs to small businesses. To not require the phytosanitary certificate or the minimal treatment proposed for red palm mites would put the Texas palm nursery and other Texas businesses using palms for landscaping at risk.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine against out-of-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.600. Quarantined Pest.

The quarantined pest is the red palm mite, *Raoiella indica* Hirst in any living stage of development.

§19.601. Quarantined Areas.

The quarantined areas are:

(1) Broward, Dade, Monroe and Palm Beach counties in the State of Florida; and

(2) any other area infested with the red palm mite.

§19.602. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) The following articles are quarantined:
Figure: 4 TAC §19.602(b)

§19.603. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into Texas, except as provided in subsection (b) of this section.

(b) Exceptions. Quarantined articles from quarantined areas are allowed entry into Texas if:

(1) treated within 14 days of the shipment as approved by the department; and

(2) accompanied by a phytosanitary certificate issued by an authorized inspector of the state of origin certifying that the article was inspected within 14 days of the shipment and is free of the quarantined pest; or

(3) accompanied by a stamp issued by an authorized representative of the state of origin certifying that the article was produced at a nursery which has entered into a compliance agreement with the

state of origin to treat and handle the quarantined article as prescribed by the department and the article is free of the quarantined pest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804452
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the Department) proposes to amend 10 TAC, Chapter 80, §§80.23, 80.30, and 80.100 relating to the regulation of the manufactured housing program. The rules and Application for Statement of Ownership and Location form are revised for clarification and a new form is proposed to assist the tax assessor-collectors in complying with requirements to provide a tax statement pursuant to §1201.206(g) of the Occupations Code.

Section 80.23(j) - Reworded subsection for clarification.

Section 80.30(i) - Reworded subsection for clarification.

Section 80.100(a) - Added new form number (44) to the list of forms.

Figure: 10 TAC §80.100(b)(8) - Revised the disclosure form by removing the notice that the form is also available in Spanish.

Figure: 10 TAC §80.100(b)(19) - Revised Blocks 4(d) and 8 in the Application for Statement of Ownership and Location by asking if there are any liens against the home.

Figure: 10 TAC §80.100(b)(44) - New Statement from Tax Assessor-Collector form to meet requirements of §1201.206(g) of the Standards Act.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and compliance with the Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address joe.garcia@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.23

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.23. Generic Standards for Footers and Piers.

(a) - (i) (No change.)

(j) Temporary support is required to insure the structural continuity of homes placed at the retail location. Thirty (30) days after the arrival of multi-section and sixty (60) days after the arrival of single-section manufactured dwellings to the retail location, homes must be temporarily lot set. If the manufacturer has instructions for temporary blocking, home should be blocked according to the manufacturer specifications. In absence of any manufacturer instructions, State Generic requirement, either paragraph (1) or (2) of this subsection, shall be used:

(1) Manufacturer dwellings supported by its running gear (left on their wheels and draw bar/hitch) shall be adequately supported under the main beam (I-beam) of within 5 feet of each end of the beam, within 5 feet of a supporting wheel and 10 feet on-center of each floor section. Any required marriage line and perimeter pier locations that are clearly marked by the manufacturer are also to be installed. Sidewall openings less than 4 feet in length do not have to be supported. Multi-section homes shall be sealed at the centerline and at all other openings to prevent exposure to the elements.

(2) Manufactured dwellings not supported on their running gear shall be adequately supported under each main frame (I-beam) within 5 feet of each end of the home and 10 feet on-center along the length of the main beam. Any required marriage line and perimeter pier locations that are clearly marked by the manufacturer are also to be installed. Sidewall openings less than 4 feet in length do not have to be supported. Multi-section homes shall be sealed at the centerline and at all other openings to prevent exposure to the elements.

[(j) For temporary blocking at a retail location. If manufacturer has instructions for temporary blocking, home should be blocked according to the manufacturer specifications. In absence of any manufacturer instructions, the State Generic should be use. Manufactured dwellings supported on their wheels and at the draw bar (hitch) shall be adequately supported under the perimeter of each floor section at 10 feet on center and under the marriage line at each column support post locations. Marriage line support post locations will be clearly marked by the manufacturer. Piers shall not be located under any window or door opening, except under jambs for openings 4 feet or greater.]

[(1) Manufactured dwellings not supported on their wheels and at the draw bar shall be adequately supported under each main frame (I-beam) and under the marriage line at each column support post location. Mainframe support post shall start not more than 5 feet from the end of the home and shall not be located under any window or door opening, except under jambs for openings 4 feet or greater.]

[(2) Manufactured dwellings shall be sealed at the centerlines and at all other openings to prevent exposure to the elements.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804590
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.30

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.30. All Licensees' Responsibilities.

(a) - (h) (No change.)

(i) Any licensee's website shall provide a conspicuously placed link [on the website's home page] to the Department's website.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804591
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 475-2206

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SUBCHAPTER I. FORMS

10 TAC §80.100

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.100. List of Forms.

(a) The following list is in numerical order with the forms located in subsection (b) of this section.

(1) - (43) (No change.)

(44) Statement from Tax Assessor-Collector.

(b) Forms.

(1) - (7) (No change.)

(8) Consumer Disclosure Statement.
Figure: 10 TAC §80.100(b)(8)

(9) - (18) (No change.)

(19) Application for Statement of Ownership and Location.
Figure: 10 TAC §80.100(b)(19)

(20) - (43) (No change.)

(44) Statement from Tax Assessor-Collector.
Figure: 10 TAC §80.100(b)(44)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 475-2206

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PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 256. ADMINISTRATION

The Office of Rural Community Affairs (the Office) proposes amendments to Chapter 256, Subchapter A, §256.1 and

§§256.3 - 256.15; and new Subchapter B, §256.100, 256.200, 256.300, 256.400, and 256.500. The proposed amendments concern the management polices of the board and executive director. The amendments are being proposed to replace the term "executive committee" with "board" throughout the chapter and to authorize the board to delegate final approval of certain documents to the executive director. The new Subchapter B is being proposed to govern negotiated rulemaking, alternative dispute resolution, collections, and to move the appeals process from Chapter 257 to Chapter 256, Subchapter B.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Stone has also determined that for each year of the first five-year period the sections are in effect the public benefit as a result of enforcing the sections will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Charles S. (Charlie) Stone, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6704. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. MANAGEMENT POLICIES OF BOARD AND EXECUTIVE DIRECTOR

10 TAC §§256.1, 256.3 - 256.15

The amendments are proposed under §487.052 of the Texas Government Code, which provides the board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§256.1. Executive Director.

(a) The Board [~~Executive Committee~~], as defined in Chapter 487 of the Government Code, shall employ an Executive Director who will serve at the will of the Board [~~Executive Committee~~].

(b) The Executive Director shall be the administrator of the agency and shall employ the staff necessary to conduct the activities of the agency.

(c) The Executive Director shall also be responsible for the operation of the agency in accordance with Board [~~Executive Committee~~] policy, state and federal law, and duties established by the Board [~~Executive Committee~~].

(d) The Executive Director is empowered to make preliminary interpretations of the Act or of these sections, except that any interpretation by the Executive Director shall not be binding upon the Board [~~Executive Committee~~].

(e) The Executive Director may appoint advisory committees from outside the agency staff to advise the staff, as the Executive Director may deem necessary.

§256.3. Chair [~~Presiding Officer~~].

The Governor [~~Members of the Executive Committee~~] shall appoint [~~annually elect~~] a presiding officer from among the members of the Board [~~Executive Committee~~]. The chair [~~presiding officer~~] shall, when present, conduct all Board [~~Executive Committee~~] meetings. The chair [~~presiding officer~~] shall appoint such committees as authorized under §256.9 of this title (relating to Committees) and may delegate the signing of official documents. The chair [~~presiding officer~~] may sign orders on behalf of the Board [~~Executive Committee~~] after the Board [~~Executive Committee~~] has approved adoption of the order. The chair [~~presiding officer~~] shall sign the certified agenda required pursuant to §551.104 of the Open Meetings Act. The chair [~~presiding officer~~] shall serve as the official spokesman of the Board [~~Executive Committee~~] and shall have such other responsibilities as assigned and such other authority as conferred by the Governor and the Board [~~Executive Committee~~].

§256.4. Vice-Chair [~~Assistant Presiding Officer~~].

Members of the Board [~~Executive Committee~~] shall annually elect a vice-chair [~~an assistant presiding officer~~] from members of the Board [~~Executive Committee~~]. The vice-chair [~~assistant presiding officer~~], in the absence of the chair [~~presiding officer~~], shall perform the duties of the chair [~~presiding officer~~] as specified in §256.3 of this title (relating to Chair [~~Presiding Officer~~]), and shall perform such other duties, as the Board [~~Executive Committee~~] shall designate.

§256.5. Secretary.

(a) Members of the Board [~~Executive Committee~~] shall annually elect a secretary[~~/treasurer~~] from among the members of the Board [~~Executive Committee~~].

(b) The secretary, in the absence of the chair [~~presiding officer~~] and vice-chair [~~assistant presiding officer~~], shall perform the duties of the chair [~~presiding officer~~] as specified in §256.3 of this title (relating to Chair [~~Presiding Officer~~]) and shall perform such other duties, as the Board [~~Executive Committee~~] shall designate.

(c) The secretary shall work with the Board [~~Executive Director~~] to assure the proper recording of minutes of the Board [~~Executive Committee~~] meetings and to assure that a copy of the minutes is transmitted to each Board [~~Executive Committee~~] member before each ensuing meeting and have charge of all records, proceedings and documents of the Board [~~Executive Committee~~] and maintain documentation of the legally required notices of each Board [~~Executive Committee~~] meeting.

§256.6. Vacancies in the Board [~~Executive Committee~~].

If for any reason a vacancy shall occur in the Board [~~Executive Committee~~], the chair [~~presiding officer~~] shall provide a notice to the nominating [~~appointing~~] authority for the position and ask for the nomination or appointment of a new member to fill the unexpired term. If the vacancy occurs in any of the officers of the Board [~~Executive Committee~~], the Board [~~Executive Committee~~] shall elect from its own membership at the first regular or special meeting following the vacancy a new officer to serve for the balance of the unexpired term.

§256.7. Board [~~Executive Committee~~] Meetings.

(a) Board [~~Executive Committee~~] meetings shall be open to the public. The presiding officer shall assure that proper notice of Board [~~Executive Committee~~] meetings is provided as required by law.

(b) Board [~~Executive Committee~~] meetings shall take place at the headquarters of the office or, if convenience of the public or the parties to a hearing will be better served, at such place as the Board [~~Executive Committee~~] may designate.

(c) Board [~~Executive Committee~~] meetings shall be held at least quarterly and written notice of at least 7 days shall be given to each member of the time and place of such meeting.

(d) Special meetings may be held upon the call of the chair [~~presiding officer~~] or upon call of a majority of the members of the Board [~~Executive Committee~~] after legally adequate notice.

(e) The Executive Director shall prepare and submit to each member of the Board [~~Executive Committee~~] prior to each meeting a copy of the proposed agenda, outlining the matters to be considered by the Board [~~Executive Committee~~]. Attached to the agenda may be documents supplementing the matters to be discussed. The chair [~~presiding officer~~] shall approve the agenda prior to its distribution to the Board [~~Executive Committee~~] members and its [~~it's~~] posting pursuant to the Open Meetings Act.

(f) Six [~~Five~~] members of the Board [~~Executive Committee~~] shall constitute a quorum.

(g) An individual member may not represent the Board [~~Executive Committee~~] by any statement or action except pursuant to the authority delegated to the individual member by the Board [~~Executive Committee~~] and recorded in the minutes of the Board [~~Executive Committee~~].

(h) Drafts of the minutes of each Board [~~Executive Committee~~] meeting will be forwarded to each Board [~~Executive Committee~~] member for their review prior to their consideration for adoption at a Board [~~an Executive Committee~~] meeting.

(i) The minutes of the Board [~~Executive Committee~~] shall be kept in the office of the Executive Director and available to the public to examine or to copy upon reimbursing the office for the cost to reproduce.

(j) No proxies, members authorized to act on behalf of another, at any Board [~~Executive Committee~~] meeting is permitted.

(k) All documents submitted to and created by the Board [~~Executive Committee~~] are subject to the provisions of the Public Information Act, Chapter 552 of the Government Code.

§256.8. Order of Business.

(a) The Executive Director, working with the chair [~~presiding officer~~], shall prepare a written agenda for each Board [~~Executive Committee~~] meeting and arrange to have a copy of the agenda distributed to each Board [~~Executive Committee~~] member.

(b) Any Board [~~Executive Committee~~] member may place an item on the Board's [~~Executive Committee's~~] agenda by written request to the chair [~~presiding officer~~] at least 10 days before the next Board [~~Executive Committee~~] meeting.

(c) Conduct of Board [~~Executive Committee~~] meetings shall be guided by Robert's Rules of Order, except that no Board [~~Executive Committee~~] action shall be invalidated by reason of failure to comply with those rules.

(d) Any person may request an appearance before the Board [~~Executive Committee~~] for the purpose of making a presentation on a matter on the agenda as posted in the *Texas Register*, provided that at least 3 days' prior to the posted meeting a written request to appear is made to the Executive Director who shall forward the request to the chair [~~presiding officer~~]; however, the chair [~~presiding officer~~] may waive the 3-day notice requirement if such action would best serve the public interest. The chair [~~presiding officer~~] may deny a request to appear based on time constraints or other reasons, which, in the chair [~~presiding officer's~~] opinion, warrant such denial. When practicable, the chair [~~presiding officer~~] shall set a specific date and time to appear, and a time limit may be imposed. The person requesting the appearance should state in writing in reasonable detail the request to be made of the Board [~~Executive Committee~~].

(e) The Board [~~Executive Committee~~] will set aside a time on its agenda for the receipt of public comment on any matter within the jurisdiction of the agency. The chair [~~Presiding Officer~~] may limit the time for each commenter to speak and exclude repetitious comments and comments not within the jurisdiction of the agency.

§256.9. Committees.

(a) Appointments to subcommittees shall be considered annually by the Board's [~~Executive Committee's~~] chair [~~presiding officer~~] to assist in carrying out the functions of the office under the provisions of the office's enabling legislation. Subcommittee appointments shall be made by the chair [~~presiding officer~~] for a term of one year but may be terminated at any point by the chair [~~presiding officer~~]. Subcommittee members may be re-appointed at the discretion of the chair [~~presiding officer~~]. The office's chair [~~presiding officer~~] shall be an ex officio member of each subcommittee. All committees shall comply with the requirements of the Open Meetings Act, Chapter 551 of the Government Code.

(b) The actions of the subcommittees are recommendations only and are not binding until consideration and action by the Board [~~Executive Committee~~] at a regularly scheduled meeting.

(c) Subcommittee meetings shall be held at the call of the subcommittee chair, and another member serving on the subcommittee shall make, in the absence of the chair, a report to the Board [~~Executive Committee~~] at its next regularly scheduled meeting.

(d) If for any reason a vacancy occurs on a subcommittee, the Board's [~~Executive Committee's~~] chair [~~presiding officer~~] may appoint a replacement in accordance with subsection (a) of this section.

(e) An internal audit standing subcommittees shall be created.

(1) The office's internal audit subcommittee shall be comprised of at least two Board [~~Executive Committee~~] members, one of whom shall serve as chair.

(2) The subcommittee shall make recommendations to the Board [~~Executive Committee~~] regarding the hiring or appointment of the agency's internal auditor and the subject matter of the agency audit.

(3) The subcommittee shall make recommendations to the Board [~~Executive Committee~~] on how best to address any findings of the internal auditor.

(f) All advisory committees shall be created and function pursuant to the requirements of Chapter 2110 of the Government Code.

(g) All subcommittee members performing any duties utilizing office facilities and/or who have access to office records, shall conform and adhere to the office's personnel policies as described in its personnel manual, the Public Information Act, Chapter 552 of the Government Code and all other applicable laws of the State of Texas governing state employees.

§256.10. Independent Contractors.

The Executive Director may, from time to time, employ independent contractors, including investigators and auditors, to perform services prescribed by the Board [~~Executive Committee~~]. The basis for compensation of independent contractors shall be stated in the contract of employment.

§256.11. Confidentiality.

Members of the Board [~~Executive Committee~~], the Executive Director, members of the office staff, and independent contractors retained by the Board [~~Executive Committee~~] shall not disclose any confidential information, which comes to their attention, except as may be required by law.

§256.12. Duties of the Executive Director.

(a) The Executive Director serves at the will of the Board [~~Executive Committee~~].

(b) The Executive Director may hire staff within the guidelines established by the Board [~~Executive Committee~~].

(c) The Executive Director reports [~~will report~~] to the Board [~~Executive Committee~~] and keeps [~~keep~~] it advised of the activities and responsibilities of the agency.

(d) The Executive Director is [~~will be~~] responsible for the day-to-day operations of the agency.

§256.13. Invalid Portions.

If any subcategory, section, subsection, sentence, clause, or phrase of these of these sections is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these sections. The Board [~~Executive Committee~~] hereby declares that it would have adopted these subcategories, sections, subsections, sentences, clauses or phrases thereof irrespective of the fact that any one of more subcategories, sections, subsections, sentences, clauses or phrases be declared invalid.

§256.14. Actions Requiring Board [~~Executive Committee~~] Approval.

(a) The following reports are subject to approval, adoption or ratification by the Board [~~Executive Committee~~] during a meeting of the Board [~~Executive Committee~~] conducted pursuant to applicable state law:

(1) The Strategic Plan required by Chapter 2056 of the Government Code;

(2) Pursuant to §487.056 of the Government Code, the biennial report to the legislature regarding the activities of the office;

(3) Pursuant to §487.558 of the Government Code, the status of the permanent endowment fund for the rural communities health care investment program;

(4) Pursuant to §487.057 of the Government Code, the Rural Health Work Plan;

(5) The legislative appropriation request to the Governor's Office of Budget and Planning and the Legislative Budget Board;

(6) Proposed legislative changes as time allows;

(7) The annual Biennial Operating Plan, Budget and Financial Report; and

(8) The Consolidated State Plan and One-Year Action Plan pursuant to 24 Code of Federal Regulations §570.485.

(b) The Board may delegate final approval of a document listed in subsection (a)(1) - (8) of this section to the Executive Director during a meeting of the Board conducted pursuant to applicable state law.

(c) [~~(b)~~] Pursuant to §487.052 of the Government Code the Board [~~Executive Committee~~] has the exclusive authority to adopt rules for the implementation of the statutory responsibilities of the office.

(d) [~~(c)~~] The appointment or removal of the office's internal auditor is conducted by the Board [~~Executive Committee~~].

§256.15. Public Hearings.

(a) Public hearings may be conducted by the Board [~~Executive Committee~~] or by the Executive Director and office staff.

(b) At least one public hearing will be conducted annually to receive public comments from interested persons on the Consolidated Plan or One-Year Action Plan pursuant to 24 Code of Federal Regulations §91.115 [~~§580.085~~] and each odd numbered year on the Rural Health Work Plan pursuant to §487.057 of the Government Code.

(c) Notice of the public hearings will be published in the *Texas Register* at least, seven days prior to the scheduled hearing date and mailed written notice will be provided to all interested persons providing a written request to the office to be on a mailing list to receive notice of office public hearings and to any other persons the office believes to have an interest in the subject matter of the public hearing.

(d) Persons intending to offer comments at the public hearing must register by providing their name, mailing address and the person or organization they are representing.

(e) In order to accommodate all persons intending to comment the chair [~~presiding officer~~] may restrict the comments to a reasonable time limitation.

(f) Persons with disabilities who plan to attend and/or comment and require reasonable accommodations to observe, access or participate in the proceeding shall make a request for a reasonable accommodation at least four [~~two~~] working days prior to the meeting.

(g) A record will be made of the proceedings and therefore all persons presenting comments will be recognized by the chair [~~presiding officer~~] and must offer their comments from a podium with electronic amplification where available.

(h) The Board [~~Executive Committee~~] will provide interested persons the opportunity to provide comments during a public comment period in accordance with the Board's [~~Executive Committee's~~] agenda and the provisions of §§256.1 - 256.15 of this chapter.

(i) Persons registered to comment will be recognized in an order to be determined by the chair [~~presiding officer~~]. The chair [~~presiding officer~~] may recognize the commenter's time limitations in assigning the order of appearance.

(j) Written statements in lieu of verbal comments may be submitted. It is preferred that written statements be included with verbal statements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2008.

TRD-200804522
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 936-6706

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SUBCHAPTER B. GENERAL POLICIES AND PROCEDURES

10 TAC §§256.100, 256.200, 256.300, 256.400, 256.500

The new sections are proposed under §487.052 of the Texas Government Code, which provides the board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed sections.

§256.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ADRC--Alternative Dispute Resolution Coordinator.

(2) Attorney General--The Office of the Attorney General of Texas.

(3) Board--The board of directors of the Office of Rural Community Affairs.

(4) Debtor--Any person or entity liable or potentially liable for an obligation owed to the Office or against whom a claim or demand for payment has been made.

(5) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(6) Entity--An entity includes, but is not limited to, a person, individual, grantee, awardee, contractor, assignee, agent, consultant, corporation, organization, association, business trust, estate trust, partnership, individual proprietorship, government, or government subdivision or any other legal entity.

(7) Make demand--To deliver or cause to be delivered by United States mail, first class, a writing setting forth the nature and amount of the obligation owed to the Office. A writing making demand is a "demand letter."

(8) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(9) Office--The Office of Rural Community Affairs.

(10) Security--Any right to have property owned by an entity with an obligation to the Office or the State of Texas sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the Office or the State of Texas and/or the Office against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to the Office to secure an obligation.

§256.200. Negotiated Rulemaking.

(a) Policy. In accordance with §487.032, Texas Government Code, it is the policy of the Office to encourage the use of negotiated rulemaking when appropriate to assist the agency in the adoption of rules and to adopt procedures for its use that are in compliance with those required by Texas Government Code, Chapter 2008.

(b) Decision to Engage in Negotiated Rulemaking. The Executive Director, in consultation with the Board, may determine to "propose to engage" in negotiated rulemaking. If so, the Executive Director appoints a convener to assist the agency in determining whether it is advisable to proceed. The convener is an agency employee without a financial or other interest in the outcome of the rulemaking process that would interfere with their ability to be impartial and unbiased.

(1) The convener identifies individuals who are likely to be affected by the proposed rule, including those who oppose the issuance of a rule. The convener discusses the following with those individuals or their representatives:

(A) whether they are willing to participate in negotiated rulemaking;

(B) whether the agency should engage in negotiated rulemaking to develop the proposed rule;

(C) which issues that a negotiated rulemaking committee should address; and

(D) whether there are other individuals the convener needs to identify who may be affected by the proposed rule.

(2) The convener then prepares a report to the Executive Director with a recommendation as to whether negotiated rulemaking is a feasible method to develop the proposed rule. The report includes all relevant considerations, including:

(A) the number of identifiable interests that would be significantly affected by the proposed rule;

(B) the probability that those interests would be adequately represented in a negotiated rulemaking;

(C) the probable willingness and authority of the representatives of affected interests to negotiate in good faith;

(D) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule;

(E) the probability that negotiated rulemaking will not unreasonably delay notice and eventual adoption of the proposed rule;

(F) the adequacy of agency and citizen resources to participate in negotiated rulemaking;

(G) the probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests; and

(H) the willingness of the agency to accept the consensus of a negotiated rulemaking committee as the basis for the proposed rule.

(3) After receipt of the convener's report, the Executive Director determines whether to proceed or not to proceed with negotiated rulemaking as a method for rule development. If the decision is to proceed with negotiated rulemaking, a notice of intent to do so is made.

(c) Notice of Intent to Engage in Negotiated Rulemaking. The Executive Director assigns the convener to assure that notice of the agency's intent to engage in negotiated rulemaking is published on the Office website and is filed with the Secretary of State for publication in the *Texas Register*.

(1) The notice includes the following:

(A) a statement that the agency intends to engage in negotiated rulemaking;

(B) a description of the subject and scope of the rule to be developed;

(C) a description of the known issues to be considered in developing the rule;

(D) a list of the interests that are likely to be affected by the proposed rule;

(E) a list of the individuals the agency proposes to appoint to the negotiated rulemaking committee to represent the agency and affected interests;

(F) a request for comments on the proposal to engage in negotiated rulemaking and on the proposed membership of the negotiated rulemaking committee; and

(G) a description of the procedure through which a person who will be significantly affected by the proposed rule may, before the agency establishes the negotiated rulemaking committee, apply to the agency for membership on the committee or nominate another to represent the person's interests on the committee.

(2) The convener collects all comments received and prepares a report to the Executive Director. After consideration of comments received, the Executive Director determines whether to proceed

or not to proceed with negotiated rulemaking. If the decision is to proceed then the Executive Director appoints the negotiated rulemaking committee and assigns staff to provide administrative support.

(d) Negotiated Rulemaking Committee and Facilitator Appointments.

(1) The Executive Director appoints agency staff who are knowledgeable of the subject and issues related to the rule and individuals to represent the interests identified by the agency that are likely to be affected by the proposed rule. Appointments are made with consideration given to an appropriate balance between representatives of affected interests.

(2) The Executive Director assigns the Alternative Dispute Resolution Coordinator to select one or more individuals qualified to serve as facilitator. The ADRC provides information to the committee regarding the qualifications and duties of the facilitator and obtains the approval of the committee for a qualified individual to serve. When the committee approves an individual to act as facilitator, the Executive Director appoints the individual to that position.

(e) Duties of the Facilitator and Committee.

(1) The facilitator presides over the meetings of the committee and is responsible to:

(A) establish procedures for conducting negotiations;

(B) discuss, negotiate, mediate, and employ other appropriate alternative dispute resolution processes to arrive at a consensus on the proposed rule, as defined by the committee; and

(C) encourage the members of the committee to reach a consensus but may not compel or coerce the members to do so.

(2) At the conclusion of the negotiations, the committee sends a written report to the Executive Director that:

(A) contains the text of the proposed rule, if the committee reached a consensus on the proposed rule; or

(B) specifies the issues on the committee reached consensus, the issues that remain unsolved, and any other information, recommendations, or materials that the committee considers important, if the committee did not reach a consensus on the proposed rule.

(f) Rule Adoption. The Executive Director reviews the report of the negotiated rulemaking committee and determines if the rule must be published as a notice of proposed rule. If so, the Executive Director assigns staff to post the report on the Office website to publish a notice of proposed rule. The notice includes a statement that:

(1) negotiated rulemaking was used in developing the proposed rule; and

(2) the report of the negotiated rulemaking committee is public information and is available to the public on the Office website.

(g) Costs. The costs of facilitator services and support for the negotiated rulemaking committee are the responsibility of the Office. Expenses of committee members incurred as a member of the negotiated rulemaking committee are the responsibility of the member unless the Executive Director determines that an exception shall be made as provided for in Texas Government Code, §2008.003(b).

§256.300. Alternative Dispute Resolution.

(a) Policy. In accordance with §2306.082(b), Texas Government Code, it is the policy of the Office to pursue fair and prompt resolution of disputes that are under the agency's jurisdiction and to encourage the use of appropriate alternative dispute resolution procedures described under Texas Government Code, Chapter 2009. Agency procedures must conform, to the extent possible, with the model guidelines issued by the State Office of Administrative Hearings.

(b) Limitations. Procedures adopted pursuant to this section do not limit access to other administrative or legal remedies available to the Office for the resolution of disputes. ADR is intended to be used as a possible option in an effort to avoid the need for litigation and in cases where other procedures for resolution do not exist. ADR will not be used to resolve disputes in agency programs arising from contract awards, employee complaints or grievances, or for issues in which the Board exercises final decision making authority. Procedures will not be applied in a manner that denies a person a right granted under state or federal law.

(c) ADR processes that may be used include:

(1) Mediation, in which an impartial third-party facilitates a resolution to the dispute.

(2) Negotiated Rulemaking, in which a neutral facilitator promotes a consensus among representatives of those whose interests will be affected by a rule.

(3) Informal Exchange, in which ORCA staff meet with various parties to give or obtain information or to clarify issues. This may be done through meetings with individuals or groups.

(d) ADR Coordinator.

(1) The Executive Director designates a trained person to act as the agency Alternative Dispute Resolution Coordinator. The ADR Coordinator should have completed the minimum training required for an "Impartial Third Party" as set forth in §154.052 of the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code.

(2) The ADR Coordinator shall:

(A) Maintain necessary agency records while maintaining the confidentiality of participants.

(B) Establish a method of choosing third-party neutrals that possess the minimum qualifications described in §154.052 of the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code.

(C) Require third-party neutrals to adhere to Standards and Duties as set forth in §154.053 of the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code.

(D) Serve as a resource for any training needed to implement this policy.

(E) Collect data concerning the effectiveness of agency procedures.

(F) Receive requests for ADR and assist the parties in determining if ADR is appropriate for the dispute and in selecting the appropriate process.

(G) As assigned by the Executive Director, assist the negotiated rulemaking committee in the selection of a qualified facilitator and inform the committee of the qualifications and duties of the facilitator.

(e) Requesting ADR.

(1) ADR may be requested by any party to a dispute. The request must be in writing to the ADR Coordinator with a copy provided to each of the parties involved and include the following:

(A) A statement of the nature of the dispute.

(B) A list of the parties involved.

(C) Any pertinent deadlines.

(D) Whether or not all parties agree to ADR.

(E) Proposed times and location.

(F) The preferred type of ADR process.

(2) The ADR Coordinator reviews the request and assists the parties in determining if ADR is appropriate, and if so, the type of ADR process to use. All parties to the dispute must agree that ADR is appropriate and on the type of ADR process to use in order to proceed under this policy.

(f) Mediation.

(1) If mediation is the selected ADR process, the ADR Coordinator selects a qualified "Impartial Third-Party" who is acceptable to both parties and arranges for a location and time that is acceptable to both parties. The ADR Coordinator advises the parties of the estimated costs of mediation and obtains the agreement of the parties to equally share those costs. The Executive Director may elect to pay all costs of mediation when it is determined to be in the best interest of the agency to do so. This is an informal process in which the parties to the dispute may directly represent their interest without presence of legal counsel. However, if any one of the parties requests to be represented by legal counsel, all parties must agree and also be represented by legal counsel.

(2) The "Impartial Third-Party" presides over the mediation process and facilitates communication between or among the parties to promote reconciliation, settlement, or understanding between them. Any resolution reached as a result of mediation must be through the voluntary agreement of all parties.

(3) At the close of mediation the facilitator prepares a report to the ADR Coordinator describing the outcome of the mediation process, including any agreement or settlement reached between the parties. Any agreement or settlement reached must be signed by both parties and provided to the ADR Coordinator. The ADR Coordinator collects all documents produced as a result of mediation and maintains the records according to confidentiality requirements and applicable state law including the Public Information Act. The ADR Coordinator provides the Executive Director with a copy of this report.

(g) Informal Exchange.

(1) If informal exchange is the selected ADR process, the ADR Coordinator assists the parties in scheduling a time and location for the exchange(s). At the close of the informal exchange process the ADR Coordinator collects all documents produced as a result of the exchange and maintains the records according to confidentiality requirements and applicable state law.

(2) Any resolution reached as a result of informal exchange must be through the voluntary agreement of all parties. The cost of this process, if any, is shared equally by both parties.

§256.400. Collections.

(a) Policy. The Office determines the liability of each entity responsible for the obligation, whether that liability can be established by rule, statutory or common law. The records of the Office contain and reflect the identity of all entities liable on the obligation or any part thereof. The procedures of the Office apply to every debtor, subject to reasonable tolerances established by the Office.

(b) Agreements. All agreements to pay or repay the Office for any grants, awards or contracts shall require the grantees, awardees or contractors of the Office to provide the Office with its correct physical address of the obligor's place of business or where applicable, place of residence and telephone number and shall advise the Office within 30 days of any change. The correct and up to date address and telephone number are maintained in the files of the Office. All agreements will provide that all grantees, awardees, and contractors that fail to provide the correct or up to date address and telephone number will be cause for the grantees, awardees or contractors to be in default of their obligation and while in default will be ineligible to receive any payments, grants, awards or contracts. A post office box address shall not be used unless it is impractical to obtain a physical address, or where the post office box address is in addition to a correct physical address maintained on the Office's books and records.

(c) Demand letters.

(1) Demand is made upon every debtor prior to referral of the account to the Attorney General. All demand letters are to be mailed in an envelope bearing the notation "address correction requested." If an address correction is provided by the United States Postal Service, the demand letter should be re-sent to that address prior to the referral procedures described herein.

(2) Prior to referral of the obligation to the Attorney General, the Office:

(A) where practical verifies the debtor's address and telephone number;

(B) transmits no more than two demand letters to the debtor at the debtor's verified address.

(i) The first demand letter is sent no later than 30 days after notification of the debt or the obligation becomes delinquent unless the debt accrued as an obligation of a predecessor agency of the Office or is not otherwise practical.

(ii) Where practical, the final demand letter is sent no sooner than 30 days, but not more than 60 days, after the first demand letter. The final demand letter includes a statement that the debt, if not paid, will be referred to the Attorney General.

(C) verifies that the obligation is not legally uncollectible or is not collectible as a practical matter.

(d) Collection histories. Where practical, the Office maintains individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his assets, and other information pertinent to collection of the delinquent account.

(e) Bankruptcy. The Office prepares and timely files a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances. Copies of all such proofs of claims filed are sent to the Attorney General upon referral. The Office maintains records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable the Office to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. The Office seeks the assistance of the Attorney General in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(f) Referrals to the Attorney General.

(1) Limitations. If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation is not be referred unless circumstances indicate that the limitation has been tolled or is otherwise inapplicable.

(2) Corporations. If a corporation has been dissolved; has been in liquidation under Chapter 7 of the United States Bankruptcy Code; has forfeited its corporate privileges or charter; in the case of a foreign corporation, had its certificate of authority revoked; or a city has

been unincorporated, the obligation is referred unless circumstances indicate that the account is clearly uncollectible.

(3) Out-of-state debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter is not to be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of Office funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(4) Deceased debtors. If the debtor is deceased, the Office files a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation is classified as uncollectible and is not referred to the Attorney General. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(5) Not later than the 120th day after the date an obligation becomes delinquent, or as soon as practical, unless the debt accrued as an obligation of a predecessor agency of the Office, the Office reports the uncollected and delinquent obligation to the Attorney General for further collection efforts. The Office does not refer an uncollected debt to the Attorney General when the size of the amount owed is not cost effective for the state to pursue; the Office considers the existence of any security including a co-signor or property with a recorded lien in deciding whether to refer a matter for collection to the Attorney General; the Office considers the likelihood of collection through passive means such as the filing of a lien where applicable prior to referral to the Attorney General; and the Office considers the availability of resources both within the Office and within the Office of the Attorney General to devote to the collection of the obligation prior to referring a matter to the Attorney General for collection.

(g) Procedures for referral to the Attorney General.

(1) The Office explores the exchange of accounts with the Attorney General by computer tape or other electronic data transfer and to discuss any variances as may be appropriate. The Office and the Attorney General may agree upon an exchange of certain minimum account information necessary for collection efforts by the Attorney General.

(2) The Office may refer individual accounts to the Attorney General. Individual accounts referred to the Attorney General include the following:

(A) copies of all correspondence between the Office and the debtor;

(B) a log sheet documenting all attempted contacts with the debtor and the result of such attempts;

(C) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(D) any information pertaining to the debtor's residence and his assets; and

(E) copies of any application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(3) Delinquent accounts upon which a bond or other security is held are referred to the Attorney General no later than 60 days after becoming delinquent or as soon as practical. All such accounts where the principal has filed for relief under federal bankruptcy laws are referred immediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.

§256.500. Appeals Process to Award of Contract.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Office of Rural Community Affairs, hereinafter referred to as the Office. Such protests must be in writing and received in the executive director's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the Office and other interested parties. For the purposes of this section, "interested parties" means all vendors who have submitted bids or proposals for the contract involved. This process does not apply to funds awarded pursuant to Chapter 255 of this title.

(b) In the event of a timely protest or appeal under this section, the Office shall not proceed further with the solicitation or with the award of the contract unless the executive director, makes a written determination that the award of the contract without delay is necessary to protect the best interests of the state.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the Office and other identifiable interested parties.

(d) The staff of the Office, hereinafter referred to as the staff, shall have the authority, prior to appeal to the executive director, to settle and resolve the dispute concerning the solicitation or award of a contract. The staff may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the staff will issue a written determination on the protest.

(1) If the staff determines that no violation of rules or statutes has occurred, it shall so inform the protesting party, and other interested parties by letter that sets forth the reasons for the determination.

(2) If the staff determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, it shall so inform the protesting party, and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the staff determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, it shall so inform the protesting party, and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract to be voided.

(f) The staff's determination on a protest may be appealed by the protesting party to the executive director. An appeal of the staff's

determination must be in writing and must be received in the executive director's office no later than 10 working days after the date of the staff's determination. The appeal shall be limited to review of the staff's determination. Copies of the appeal must be mailed or delivered by the protesting party to the other interested parties and must contain a certified statement that such copies have been provided.

(g) The executive director may confer with the general counsel in the review of the matter appealed. The executive director may, in his/her discretion, refer the matter to the Board for its consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(h) When a protest has been appealed to the executive director under subsection (f) of this section and has been referred to the Board by the executive director under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal and responses of interested parties, if any, shall be mailed to the Board.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the general counsel at least 48 hours in advance of the open meeting.

(3) The Board may consider oral presentations and written documents presented by staff and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4) The Board's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(i) Unless good cause for delay is shown or the Board determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) A decision issued either by the Board in open meeting, or in writing by the executive director, shall be the final administrative action of the Office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2008.

TRD-200804523
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 936-6706

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.8

The Texas Higher Education Coordinating Board proposes new §5.8 concerning Uniform Grade Point Average Calculation. Specifically, this new section concerning Uniform Grade Point Average Calculation will establish a standard method for computing a student's high school grade point average. The method must be based on a four-point scale and give additional weight to more rigorous courses. The standard method established for computing a student's high school Grade Point Average (GPA) applies to computing the GPA of a student applying as a first-time freshman for admission to a general academic teaching institution beginning with admissions for the 2009 fall semester.

Dr. Judith Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be increased student success and graduation from general academic teaching institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Natalie Coffey, Senior Program Director, Texas Higher Education Coordinating Board, P.O Box 12788, Austin, Texas 78711, or natalie.coffey@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §51.807, which requires the Coordinating Board to adopt rules establishing a standard method for computing a student's high school grade point average.

The new section affects Texas Education Code, §51.807.

§5.8. Uniform Grade-Point Average Calculation for Admission to General Academic Teaching Institutions.

Procedures for calculating the high school grade-point average for students seeking admission to a Texas general academic teaching institution shall be as follows:

(1) Only official high school transcripts shall be accepted by the general academic teaching institution for evaluation and grade-point calculation.

(2) A four-point scale shall be used in computing the Uniform Grade-Point Average with the exception of paragraph (5) of this section.

(3) No grade points shall be awarded for courses that do not result in credit awarded (e.g.: failed courses).

(4) All academic courses included in Chapters 110 - 114 of this title, Texas Essential Knowledge and Skills, shall be used in calculating the Uniform Grade-Point Average regardless of when the course was taken.

(A) Grades earned in local credit courses shall not be included in the computation of the Uniform Grade-Point Average.

(B) Grades from out-of-state academic courses shall be included in the computation of the Uniform Grade-Point Average if state credit toward the Recommended or Distinguished High School Program is awarded for them.

(5) Advanced Placement (AP), International Baccalaureate (IB), and academic Dual Credit courses that are part of Chapters 110 - 114 of this title, Texas Essential Knowledge and Skills, shall be weighted equally with an additional weighting of 1.0 points in the calculation of the Uniform Grade-Point Average.

(6) The Uniform Grade-Point Average shall be computed for use by the general academic teaching institution:

(A) By multiplying each grade (see paragraph (4) of this section) by the semester or quarter credit hours earned per course and totaling the products, and

(B) The total of the products shall be divided by the total semester or quarter credits.

(C) The result is to be calculated to no more than three decimal places, giving the official cumulative Uniform Grade-Point Average.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804611
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 23, 2008
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.24

The Texas Higher Education Coordinating Board proposes amendments to §22.24, concerning Provisions for the Tuition Equalization Grant Program.

Specifically the proposed amendments to §22.24(5) clarifies that the only graduate students who may qualify for a Tuition Equalization Grant are those who are pursuing their first master's or first doctoral degree.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more clarity for and consistency among institutions administering the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

The amendments affect Texas Education Code, §§61.221 - 61.230.

§22.24. Eligible Students.

To receive an award through the TEG Program, a student must:

(1) - (4) (No change.)

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate's degree, first baccalaureate degree, first master's degree or first doctoral degree [~~or a graduate degree~~];

(6) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804597
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 23, 2008
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.9, regarding Applications. The proposed amendments restore language in subsection (a) that was inadvertently omitted when other amendments were made in 2006 and revise the Appraiser Experience Log to comply with new Appraiser Qualifications Board (AQB) requirements as articulated in AQB Guide Note 6.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no

anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is (1) greater clarity regarding requirements to become licensed, and (2) that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee or registered as a temporary nonresident appraiser shall file an application using forms prescribed by the Board. The Board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Prior to submission of any application, an applicant shall submit the applicant's education for evaluation and approval along with the requisite education evaluation fee and must obtain a written response from the Board showing the applicant meets current education requirements for the applicable license or certification. Any such approval shall then remain valid for one year from the date of issuance. Except as provided by the Act, the Board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the fees requested by the board;

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the board;

(4) provides all supporting documentation or information requested by the board in connection with the application;

(5) satisfies all unresolved enforcement matters and requirements with the board; and

(6) meets any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the Board and published and available from the Board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) - (8) (No change.)

(9) Appraiser Experience Log, TALCB Form AEL 7-1 (10/08) [~~7-0 (804)~~];

(10) - (17) (No change.)

(c) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804442
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 465-3900

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22 TAC §153.11

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.11, regarding Examinations. The proposed amendments modify the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is reduced cost to applicants for appraiser licenses.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code §1103.156, which authorizes the Texas Appraiser Licensing and Certification Board to establish examination fees.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.11. Examinations.

(a) (No change.)

(b) Each examination shall be consistent with the examination criteria and examination content outline of the Appraiser Qualifications Board (AQB) for the category of license or certification sought. Each applicant must achieve a passing score acceptable to the AQB on the examination to become licensed or certified. An applicant may file an application to take the examination on the form approved by the board or on a form required by the testing service under contract with the board. In either case, the applicant shall submit the $61.00 [~~$125.00~~] examination fee as instructed. The board shall require the contracted testing service to notify each person taking an examination whether the person has passed or failed the examination not later than the 31st day after the examination date. If notification of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day after the examination date. The results of the examination are confidential.

(c) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804446
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 465-3900

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22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.18, regarding Appraiser Continuing Education. The proposed amendments serve two purposes: (1) to limit the amount of participation, other than as a student, in real estate appraisal educational processes and programs that may be used to satisfy appraiser continuing education (ACE) requirements, in order to comply with new Appraiser Qualifications Board (AQB) requirements, and (2) to delete the language of subsection (c), which is duplicative of 22 TAC §153.17(c).

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP). The courses must comply with the requirements set out in subsection (c) [~~(d)~~] of this section.

(b) (No change.)

[~~(c) The appraiser continuing education requirement as set forth in §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces may be deferred for a period up to 180 days upon return to civilian status provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty during the person's last renewal period.~~]

(c) [~~(d)~~] In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A) - (H) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that has been approved by the Appraiser Qualifications Board course approval process or by another state appraiser licensing and certification board. Course providers may obtain prior approval of continuing education offerings by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process or by another state appraiser licensing and certification board.

(C) Distance education courses, provided that the course is approved by the board and the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has been approved the Appraiser Qualifications Board under its course approval process and the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation. A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(D) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(E) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) be the National USPAP Update Course or National USPAP Course or its equivalent as determined by the AQB;

(ii) use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; additionally,

(iv) providers may include up to one additional hour of supplemental Texas specific information. This may include such topics as the TALCB Act, TALCB Rules, processes and procedures, enforcement issues, or other topics deemed to be appropriate by the board.

(F) As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(G) Up to one half of an individual's continuing education requirement may be satisfied through [~~Appraiser continuing education credits may also be granted for~~] participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(H) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804445
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3900

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22 TAC §153.23

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.23, regarding Inactive Certificate or License. The proposed amendments serve two purposes: (1) to require inactive appraisers who wish to return to active status to complete all education that would have been required had the license been on active status, rather than only the education that was not completed during the last two-year period, as required by the federal Appraiser Qualification Board (AQB); and (2) to correct a non-substantive typographical error in subsection (b) that was introduced when the section was adopted in 2003.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There will be an adverse impact on a very small number of appraisers (many of whom are organized as small businesses or micro-businesses), as appraisers who wish to return to active status after more than two years on inactive status will have to take more than the 28 hours of continuing education courses that would have been required under the current rule. The cost to take an additional 28 hours of coursework is estimated to be approximately $300 - $400. The alternative to this rule would be to leave the rule as it currently is or to require a smaller number of additional hours; however, doing so would cause the TALCB to be out of compliance with AQB requirements and could jeopardize the state's ability to license and certify appraisers. Accordingly, the cost to a very small number of appraisers, small businesses, and micro-businesses as a result of implementing the amendments is outweighed by the benefit to all appraisers and to the public of continued availability of appraisal services.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.23. Inactive Certificate or License.

(a) (No change.)

(b) A certified or licensed appraiser whose certificate or license has expired may request to be placed on inactive status, provided the appraiser:

(1) applies to the board no later than the first anniversary of the expiration date of the appraiser's certificate or license on a Request for Inactive Status form approved by the board; and

(2) pays the appropriate renewal fees and inactive status fee as specified in §153.5 of this title.[~~; and~~]

(c) (No change.)

(d) To return to active status, a licensed or certified appraiser who has been placed on inactive status must:

(1) - (2) (No change.)

(3) satisfy all appraiser continuing education (ACE) requirements specified in §153.18 of this title (relating to Appraiser Continuing Education) that were not completed while on inactive status, except that the appraiser is not required to complete the most current USPAP update course more than once in order to return to active status and shall substitute other approved courses to meet the required number of hours of ACE [~~within two years preceding the date of the request to return to active status~~].

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3900

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER C. POST HEARING

22 TAC §157.17

The Texas Appraiser Licensing and Certification Board proposes amendments to §157.17, regarding Final Decisions and Orders. The proposed amendments eliminate the 60-day time period between the issuance of a proposal for decision and action on the proposal by the Board.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is increased efficiency and consumer protection in the administrative process. By requiring the Board simply to wait until all applicable appeal time periods have elapsed before taking action, those cases that were not appealed can be acted on by the Board at an earlier meeting than under the 60-day rule.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code Chapter 1103, Subchapter K, Contested Case Hearings.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§157.17. Final Decisions and Orders.

(a) Board Action. The proposal for decision may be acted upon by the Board after the expiration of the applicable time periods for filing exceptions and replies to exceptions, and after the administrative law judge has ruled on any exceptions and replies [~~60 days after the date of service of the proposal for decision~~]. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Devon V. Bijansky
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Texas Appraiser Licensing and Certification Board
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposed amendments to §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors.

The amendments to §535.64 address the requirements of Texas Occupations Code §1101.301 and §1101.304 regarding the collection of exam passage rate data on graduates of TREC-accredited real estate schools. The amendments clarify that the last course taken for purposes of the data to be collected is the last core course taken from a TREC-accredited provider within 2 years of the date the person filed an education evaluation with the commission. Courses taken at schools that are not accredited by TREC, such as colleges and universities, will be not be collected or counted. The amendments also clarify that each type of licensing exam that a graduate takes for the first time will have a school affiliation unless the last core course taken by the applicant was taken at a school that was not TREC-accredited, or the course was taken more than 2 years before the date the graduate submitted an education evaluation to the commission.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be constituency with statutory requirements in how the commission renews the accreditation of TREC-accredited real estate schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment to the rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) - (d) (No change.)

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period. [~~If a school was accredited prior to the effective date of this section, the accreditation of the school expires January 1, 2001, and the school may apply for accreditation at any time.~~]

(1) To renew its accreditation, at least 55 percent of the school's graduates must have passed a commission licensing exam the first time the exam is taken by the graduates.

(2) The school a graduate is affiliated with for purposes of this subsection is the school where the graduate took his or her last core course, unless the course was taken more than two years before the date the graduate submitted an education evaluation to the commission. If the graduate's last core course was taken more than two years before that date, the commission will not count the course or the graduate in calculating the school's exam pass rate.

(3) For purposes of calculating the exam passage rate of a commission-accredited school, each type of licensing examination that a graduate takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the graduate submitted an education evaluation to the commission.

(f) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to §535.101, regarding Fees.

The proposed amendments increase the examination fee for salesperson and broker applicants from $59 to $61. The proposed amendment modifies the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. The anticipated economic cost to persons who are required to comply with the proposed amendment is insignificant.

Ms. DeHay has also determined that the anticipated public benefit as a result of these amendments is the establishment of a reasonable fee for examination services by a well-qualified vendor.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) - (4) (No change.)

(5) a fee of $61 [~~$59~~] for taking a license examination;

(6) - (18) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) proposes amendments to §535.210, regarding Fees.

The proposed amendments increase the examination fee for home inspector applicants from $59 to $61. The proposed amendment modifies the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. The anticipated economic cost to persons who are required to comply with the proposed amendment is insignificant.

Ms. DeHay has also determined that the anticipated public benefit as a result of these amendments is the establishment of a reasonable fee for examination services by a well-qualified vendor.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101 and Chapter 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.210. Fees.

(a) The commission shall charge and collect the following fees:

(1) - (6) (No change.)

(7) a fee of $61 [~~$59~~] for taking a license examination;

(8) - (11) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loretta R. DeHay
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Texas Real Estate Commission
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22 TAC §535.222

The Texas Real Estate Commission (TREC) proposes new rule §535.222, concerning inspection reports. The rule clarifies the inspection reporting requirements as recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. The rule clarifies that all inspections performed pursuant to an inspector license issued by TREC must be reported in writing and establishes general requirements regarding information contained in the report and delivery to the client.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

Ms. Bijansky also has determined that for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amendments will be increased clarity for inspectors and consumers alike regarding the requirements of a written inspection report.

Comments on the proposed rule may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed rule.

§535.222. Inspection Reports.

(a) For each inspection, the inspector shall:

(1) prepare a written inspection report noting observed deficiencies and other items required to be reported; and

(2) deliver the report within a reasonable period of time to the person for whom the inspection was performed.

(b) The inspection report shall include:

(1) the name and license number of the responsible inspector;

(2) the name and license number of the apprentice or real estate inspector, and the signature of the inspector's sponsoring professional inspector, if applicable;

(3) the address or other unique description of the property on each page of the report; and

(4) the client's name.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
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22 TAC §535.223

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission (TREC) proposes the repeal of §535.223, concerning standard inspection report forms. The repeal is proposed because the subjects addressed in this section will be covered in new §535.222 and §535.223 TREC is simultaneously proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice and reporting requirements. The proposed new rules, otherwise explained in this issue of the *Texas Register*, would adopt by reference a revised standard inspection report form, clarify that a written inspection report is required for all inspections performed pursuant to an inspector license issued by TREC, and clarify when the standard form is required and how it may be modified by licensees.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

Ms. Bijansky also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification for inspectors and consumers alike regarding the use of the standard inspection report form.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.223. Standard Inspection Report Forms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Devon V. Bijansky
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Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes new §535.223, concerning standard inspection report forms. The new rule would adopt by reference a revised standard inspection report form. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997). The new rule also clarifies when the form is required and how it may be modified by licensees.

The proposed rule has been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, to correspond to proposed revisions to the inspector standards of practice that are otherwise explained in this issue of the *Texas Register*.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There may be a small cost to some licensees who may have to purchase upgrades to inspection report software, but this minimal cost is outweighed by the benefit to the public.

Ms. Bijansky also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the new rule will be increased clarity for inspectors and consumers alike regarding the use of the standard inspection report form.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rule.

§535.223. Standard Inspection Report Form.

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7A-1, approved by the Commission in 2008 for use in reporting inspection results. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property shall be reported on Form REI 7A-1 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, length of blanks, borders, and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) the inspector may delete the line for name, license number, and signature of the sponsoring inspector if the inspection was performed solely by a professional inspector;

(B) the inspector may change the typeface, provided that fonts are no smaller than those used in the printed version of the standard form;

(C) the inspector may use legal sized (8-1/2" by 14") paper;

(D) the inspector may add a cover page to the report form;

(E) the inspector may add footers to each page of the report except the first page and may add headers to each page of the report;

(F) the inspector may place the property identification and page number at either the top or bottom of the page;

(G) the inspector may add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(H) the inspector may list other items in the appropriate section of the form and additional captions, letters, and check boxes for those items;

(I) the inspector may delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(J) the inspector may delete Subsection L., Other, of Section I., Structural Systems;

(K) the inspector may allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary or may attach additional pages of comments to the report; and

(L) if necessary to report the inspection of a part, component, or system not contained in the standard form, or space provided on the form is inadequate for a complete reporting of the inspection, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission.

(4) The inspector shall renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, and/or deficient and shall explain the findings in the appropriate space on the form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; or

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report; or

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase. "If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804545
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 465-3900

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22 TAC §§535.227 - 535.231

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission (TREC) proposes the repeal of §§535.227 - 535.231, concerning inspector standards of practice. The repeal of the sections is proposed because the subjects addressed in these sections will be covered in new §§535.227 - 535.233 TREC is simultaneously proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice. The proposed new rules, otherwise explained in this issue of the *Texas Register*, divide the standards of practice for inspectors into seven sections (two additional sections) and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC.

As the proposed new sections will comprehensively address the subjects of the proposed repealed rules as well implement the recommendations, repeal of the existing rules is necessary to avoid confusion and repetition.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the sections.

Ms. Bijansky also has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the new rules will be clarification of professional standards for home inspections. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.227. Standards of Practice: General Provisions.

§535.228. Standards of Practice: Inspection Guidelines for Structural Systems.

§535.229. Standards of Practice: Inspection Guidelines for Mechanical Systems: Appliances, Cooling Systems, Heating Systems, Ducts, Vents and Flues, and Plumbing Systems.

§535.230. Standards of Practice: Inspection Guidelines for Electrical Systems.

§535.231. Standards of Practice: Optional Systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) proposes new rules §§535.227 - 535.233, concerning inspector standards of practice. The new rules are proposed in conjunction with the Real Estate Inspector Committee's comprehensive review and recommendation regarding inspector standards of practice. The proposed new rules divide the standards of practice for inspectors into seven sections by providing two additional sections and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC.

Generally, the proposed new sections rearrange the current standards of practice, listing the systems, components, and items in a home which the inspector must include in an inspection unless the inspector's client agrees to limit the scope of the inspection.

New §535.227 addresses general provisions which include definitions, the scope, and the departure provisions of an inspection. New §535.228 addresses minimum inspection requirements for structural systems. New §535.229 addresses minimum inspection requirements for electrical systems. New §535.230 address minimum inspection requirements for heating, ventilation, and air conditioning systems. New §535.231 addresses minimum inspection requirements for plumbing systems. New §535.232 addresses minimum inspection requirements for appliances. New §535.233 addresses minimum inspection requirements for optional systems.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. Bijansky also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the new rules will be increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

Comments on the proposed rules may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rules.

§535.227. Standards of Practice: General Provisions.

(a) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) undue hazard to the inspector;

(B) moving furnishings or large, heavy, or fragile objects;

(C) using specialized tools or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Cosmetic--Related only to appearance or aesthetics, and not related to structural performance, operability, or water penetration.

(4) Deficiency--A condition that, in the inspector's reasonable opinion, adversely and materially affects the performance of a system or component or constitutes a hazard to life, limb, or property as specified by these standards of practice. General deficiencies include but are not limited to inoperability, material distress, water penetration, damage, deterioration, missing parts, and unsuitable installation.

(5) Deficient--Reported as having one or more deficiencies.

(6) Inspect--To look at and examine accessible items, parts, systems, or components and report observed deficiencies.

(7) Performance--Achievement of an operation, function, or configuration consistent with accepted industry practice.

(8) Report--To provide the inspector's opinions and findings on the standard inspection report form.

(9) Specialized tools--Tools such as thermal imaging equipment, moisture meters, gas leak detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.

(10) Specialized procedures--Procedures such as environmental testing, elevation measurement, and any method employing destructive testing that damages otherwise sound materials or finishes.

(11) Standards of practice--§§535.227 - 535.233 of this title.

(b) Scope.

(1) These standards of practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a limited visual survey and basic operation of the systems and components of a building using normal controls and does not require the use of specialized tools or procedures. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection. The inspector may provide a higher level of inspection performance than required by these standards of practice and may inspect parts, components, and systems in addition to those described by the standards of practice.

(2) General Requirements. The inspector shall:

(A) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(B) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(C) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(3) General limitations. The inspector is not required to:

(A) inspect:

(i) items other than those listed herein;

(ii) elevators;

(iii) detached structures, decks, docks, fences, or waterfront structures or equipment;

(iv) anything buried, hidden, latent, or concealed; or

(v) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, or solar panels;

(B) report:

(i) past repairs that appear to be effective and workmanlike;

(ii) cosmetic or aesthetic conditions; or

(iii) wear and tear from ordinary use;

(C) determine:

(i) insurability, warrantability, suitability, adequacy, capacity, reliability, marketability, operating costs, recalls, counterfeit products, life expectancy, age, energy efficiency, vapor barriers, thermostatic operation, code compliance, utility sources, or manufacturer or regulatory requirements except as specifically required by these standards;

(ii) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(iii) the presence, absence, or risk of asbestos, lead-based paint, mold, mildew, or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison; or

(iv) types of wood or preservative treatment and fastener compatibility;

(D) anticipate future events or conditions, including but not limited to:

(i) decay, deterioration, or damage that may occur after the inspection;

(ii) deficiencies from abuse, misuse or lack of use,

(iii) changes in performance of any part, component, or system due to changes in use or occupancy;

(iv) the consequences of the inspection or its effects on current or future buyers and sellers;

(v) common household accidents, personal injury, or death;

(vi) the presence of water penetration(s); or

(vii) future performance of any item;

(E) operate shut-off, safety, stop, pressure, or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(F) designate conditions as safe;

(G) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(H) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(I) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(J) operate recirculation or sump pumps;

(K) remedy conditions preventing inspection of any item;

(L) apply open flame to operate any appliance;

(M) turn on decommissioned equipment, systems, or utility services; or

(N) provide repair cost estimates, recommendations, or re-inspection services.

(4) In the event of a conflict between specific provisions and general provisions in the standards of practice, specific provisions shall take precedence.

(5) Departure.

(A) An inspector may depart from the standards of practice only if the requirements of subparagraph (B) of this paragraph are met, and:

(i) the inspector and client agree the item is not to be inspected;

(ii) the inspector is not qualified to inspect the item;

(iii) conditions beyond the control of the inspector reasonably prevent inspection of an item;

(iv) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(v) the inspector reasonably determines that conditions or materials are hazardous to the health or safety of the inspector; or

(vi) the inspector reasonably determines that actions of the inspector may cause damage to the property.

(B) If a part, component, or system required for inspection is not inspected, the inspector shall:

(i) advise the client at the earliest practical opportunity that the part, component, or system will not be inspected; and

(ii) make an appropriate notation on the inspection report form, clearly stating the reason the part, component, or system was not inspected.

(C) If the inspector routinely departs from inspection of a part, system, or component, the earliest practical opportunity for the notice required by this subsection is the first contact with the prospect and the inspector has reason to believe that the property being inspected has the part, system, or component the inspector routinely does not inspect.

(c) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations. The inspector shall:

(1) inspect slab surfaces, foundation framing components, subflooring, and related structural components;

(2) report:

(A) the type of foundation(s); and

(B) the vantage point from which the crawl space was inspected; and

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) open or offset concrete cracks;

(B) binding, out-of-square, non-latching, warped, or twisted doors or frames;

(C) framing or frieze board separations;

(D) out-of-square wall openings or separations at wall openings or between the cladding and window/door frames;

(E) sloping floors, countertops, cabinet doors, or window/door casings;

(F) wall, floor, or ceiling cracks;

(G) rotating, buckling, cracking, or deflecting masonry cladding;

(H) separation of walls from ceilings or floors; and

(I) soil erosion, subsidence or shrinkage adjacent to the foundation and differential movement of abutting flatwork such as walkways, driveways, and patios;

(4) report as Deficient:

(A) exposed or damaged reinforcement;

(B) a crawl space that does not appear to be adequately ventilated;

(C) crawl space drainage that does not appear to be adequate;

(D) deteriorated materials;

(E) damaged beams, joists, bridging, blocking, piers, posts, pilings, or subfloor;

(F) non-supporting piers, posts, pilings, columns, beams, sills, or joists; and

(G) damaged retaining walls related to foundation performance; and

(5) render a written opinion as to the performance of the foundation.

(b) Specific limitations for foundations. The inspector is not required to:

(1) enter a crawlspace or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(2) provide an exhaustive list of indicators of possible adverse performance; or

(3) inspect retaining walls not related to foundation performance.

(c) Grading and drainage. The inspector shall report as Deficient:

(1) improper or inadequate grading around the foundation (including flatwork);

(2) erosion;

(3) water ponding; and

(4) deficiencies in installed gutter and downspout systems.

(d) Specific limitations for grading and drainage. The inspector is not required to:

(1) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(2) determine area hydrology or the presence of underground water; or

(3) determine the efficiency or operation of underground drainage systems.

(e) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof covering(s);

(B) vantage point from where the roof was inspected;

(C) any levels or surfaces that were not accessed;

(D) evidence of previous repairs to roof covering materials, flashing details, skylights, and other roof penetrations; and

(E) evidence of water penetration; and

(3) report as Deficient:

(A) a roof covering that is not appropriate for the slope of the roof;

(B) deficiencies in:

(i) fastening of roof covering material, as determined by a random sampling;

(ii) roof covering materials;

(iii) flashing details;

(iv) skylights; and

(v) other roof penetrations.

(f) Specific limitations for roof covering. The inspector is not required to:

(1) determine the remaining life expectancy of the roof covering;

(2) inspect the roof from the roof level if, in the inspector's reasonable judgment, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;

(3) determine the number of layers of roof covering material;

(4) identify latent hail damage; or

(5) provide an exhaustive list of locations of water penetrations or previous repairs.

(g) Roof structure and attic. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) the presence of and approximate average depth of attic insulation and thickness of vertical insulation, when visible; and

(C) evidence of water penetration; and

(2) report as Deficient:

(A) attic space that does not appear to be adequately ventilated;

(B) deficiencies in installed framing members and decking;

(C) deflections or depressions in the roof surface as related to the adverse performance of the framing and the roof deck;

(D) missing insulation;

(E) deficiencies in attic access ladder and access opening; and

(F) deficiencies in attic ventilators.

(h) Specific limitations for roof structure and attic. The inspector is not required to:

(1) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(2) operate powered ventilators; or

(3) provide an exhaustive list of locations of water penetrations.

(i) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

(A) doors and hardware that do not operate properly;

(B) deficiencies related to structural performance or water penetration; and

(C) lack of fire separation between the garage and the residence and its attic space.

(j) Specific limitation for interior walls, doors, ceilings, and floors. The inspector is not required to:

(1) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(2) provide an exhaustive list of locations of water penetrations.

(k) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

(A) the lack of functional emergency escape and rescue openings in all sleeping rooms;

(B) the lack of a solid wood door not less than 1-3/8 inches in thickness, a solid or honeycomb core steel door not less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(C) missing or damaged screens;

(D) deficiencies related to structural performance or water penetration; and

(E) deficiencies in:

(i) claddings;

(ii) water resistant materials and coatings;

(iii) flashing details and terminations;

(iv) the condition and operation of exterior doors, garage doors, and hardware; and

(v) window operation and components.

(l) Specific limitations for exterior walls, doors, and windows. The inspector is not required to:

(1) report the condition or presence of awnings, shutters, security devices, or systems;

(2) determine the cosmetic condition of paints, stains, or other surface coatings; or

(3) operate a lock if the key is not available.

(m) Exterior and interior glazing. The inspector shall:

(1) inspect the window and door glazing; and

(2) report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping, and glazing compound in windows and exterior doors; and

(C) the absence of safety glass in hazardous locations.

(n) Specific limitation for exterior and interior glazing. The inspector is not required to:

(1) exhaustively observe insulated windows for evidence of broken seals;

(2) exhaustively observe glazing for identifying labels; or

(3) identify specific locations of damage.

(o) Interior and exterior stairways. The inspector shall report as Deficient:

(1) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(2) deficiencies in steps, stairways, landings, guardrails, and handrails.

(p) Specific limitation for stairways. The inspector is not required to exhaustively measure every stairway component.

(q) Fireplace and chimney. The inspector shall report as Deficient:

(1) built-up creosote in visible areas of the firebox and flue;

(2) the presence of combustible materials in near proximity to the firebox opening;

(3) the absence of fireblocking at the attic penetration of the chimney flue, where accessible;

(4) an inoperative circulating fan; and

(5) deficiencies in the:

(A) damper;

(B) lintel, hearth, hearth extension, and firebox;

(C) gas log lighter valve and location;

(D) combustion air vents; and

(E) chimney structure, termination, coping, crown, caps, and spark arrestor.

(r) Specific limitations for fireplace and chimney. The inspector is not required to:

(1) verify the integrity of the flue;

(2) perform a chimney smoke test; or

(3) determine the adequacy of the draft.

(s) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect balconies, attached carports, and attached porches and abutting porches, decks, and balconies that are used for ingress and egress; and

(2) report as Deficient:

(A) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter;

(B) deficiencies in visible footings, piers, posts, pilings, beams, joists, decking, water proofing at interfaces, flashing, surface coverings, and attachment points of porches, decks, balconies, and carports; and

(C) deficiencies in, or absence of required, guardrails and handrails.

(t) Specific limitation for porches, balconies, decks, and carports. The inspector is not required to:

(1) exhaustively measure the porch, balcony, deck, or attached carport components; or

(2) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels. The inspector shall report as Deficient:

(1) a drop, weatherhead, or mast that is not securely fastened to the structure;

(2) the lack of a grounding electrode system;

(3) the lack of a grounding electrode conductor;

(4) the lack of a secure connection to the grounding electrode system;

(5) deficiencies in the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(6) electrical cabinets, gutters, meter cans, and panel boards that:

(A) are not secured to the structure;

(B) are not appropriate for their location;

(C) have deficiencies in clearances and accessibility;

(D) are missing knockouts; or

(E) are not bonded and grounded;

(7) cabinets, disconnects, cutout boxes, and panel boards that do not have dead fronts secured in place with proper fasteners;

(8) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(9) trip ties not installed on 240 volt circuits;

(10) deficiencies in the type and condition of the wiring in the cutout boxes, cabinets, or gutters;

(11) deficiencies in the compatibility of overcurrent devices and conductors;

(12) deficiencies in the overcurrent device and circuit for labeled and listed 240 volt appliances;

(13) a panel that is installed in a hazardous location, such as a clothes closet, a bathroom, where there are corrosive or easily ignitable materials, or where the panel is exposed to physical damage;

(14) the absence of appropriate connections, such as copper/aluminum-approved devices;

(15) the absence of anti-oxidants on aluminum conductor terminations;

(16) the lack of a main disconnecting means;

(17) the lack of arc-fault circuit interrupting devices serving family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreations rooms, closets, hallways, or similar rooms or areas; and

(18) failure of operation of installed arc-fault circuit interrupter devices.

(b) Specific limitations for service entrance and panels. The inspector is not required to:

(1) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(2) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(3) report the lack of arc-fault circuit interrupter protection when the circuits are in conduit;

(4) conduct voltage drop calculations;

(5) determine the accuracy of overcurrent device labeling;

(6) remove covers where hazardous as judged by the inspector;

(7) verify the effectiveness of overcurrent devices; or

(8) operate overcurrent devices.

(c) Branch circuits, connected devices, and fixtures. The inspector shall:

(1) report the type of branch circuit conductors;

(2) manually test the accessible smoke alarms by use of the manufacturer's approved test or by the use of canned smoke; and

(3) report as Deficient:

(A) the lack of ground-fault circuit interrupter protection in all:

(i) bathroom receptacles;

(ii) garage receptacles;

(iii) outdoor receptacles;

(iv) crawl space receptacles;

(v) unfinished basement receptacles;

(vi) kitchen countertop receptacles; and

(vii) laundry, utility, and wet bar sink receptacles located within 6 feet of the outside edge of a laundry, utility, or wet bar sink; and

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) receptacles that:

(i) are damaged;

(ii) are inoperative;

(iii) have incorrect polarity;

(iv) are not grounded, if applicable;

(v) display evidence of arcing or excessive heat;

(vi) are not securely mounted; or

(vii) have missing or damaged covers;

(D) switches that:

(i) are damaged;

(ii) are inoperative;

(iii) display evidence of arcing or excessive heat;

(iv) are not securely mounted; or

(v) have missing or damaged covers;

(E) deficiencies in or absences of conduit, where applicable;

(F) appliances and metal pipes that are not bonded or grounded;

(G) deficiencies in wiring, wiring terminations, junctions, junction boxes, and fixtures;

(H) the lack of equipment disconnects;

(I) the absence of appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(J) improper use of extension cords;

(K) deficiencies in smoke alarms that are not connected to a central alarm system; and

(L) the lack of smoke alarms:

(i) in each sleeping room;

(ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(iii) on each additional story of the dwelling, including basements but excluding crawl spaces and uninhabitable attics (in dwellings with split levels and without an intervening door between the levels, a smoke alarm installed on the upper level and the adjacent lower level shall suffice provided that the lower level is less than one full story below the upper level).

(d) Specific limitations for branch circuits, connected devices, and fixtures. The inspector is not required to:

(1) inspect low voltage wiring;

(2) disassemble mechanical appliances;

(3) verify the effectiveness of smoke alarms;

(4) verify interconnectivity of smoke alarms;

(5) activate smoke alarms that are being actively monitored or require the use of codes; or

(6) verify that smoke alarms are suitable for the hearing-impaired.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

(a) Heating equipment. The inspector shall:

(1) report:

(A) the type of heating system(s); and

(B) the energy source(s);

(2) report as Deficient:

(A) an inoperative unit;

(B) deficiencies in the controls and operating components of the system;

(C) the lack of protection from physical damage;

(D) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(E) inappropriate location;

(F) inadequate access and clearances;

(G) deficiencies in mounting and operation of window units; and

(H) deficiencies in thermostats;

(3) in electric units, report as Deficient deficiencies in:

(A) operation of heating elements; and

(B) condition of conductors; and

(4) in gas units, report as Deficient:

(A) gas leaks;

(B) the presence of forced air in the burner compartment;

(C) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(D) the lack of a gas shut-off valve; and

(E) deficiencies in:

(i) conditioned, combustion, and dilution air;

(ii) gas shut-off valves and locations;

(iii) gas connector materials and connections; and

(iv) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(b) Cooling equipment other than evaporative coolers. The inspector shall:

(1) report the type of system(s); and

(2) report as Deficient:

(A) inoperative unit(s);

(B) inadequate cooling as demonstrated by its performance in the reasonable judgment of the inspector;

(C) inadequate access and clearances;

(D) noticeable vibration of the blower fan or condensing fan;

(E) deficiencies in the condensate drain and auxiliary/secondary pan and drain system;

(F) water in the auxiliary/secondary drain pan;

(G) a primary drain pipe that terminates in a sewer vent;

(H) missing or deficient refrigerant pipe insulation;

(I) dirty evaporator or condensing coils, where accessible;

(J) damaged casings on the coils;

(K) a condensing unit lacking adequate clearances or air circulation or that has deficiencies in the condition of fins, location, levelness, or elevation above ground surfaces;

(L) deficiencies in mounting and operation of window or wall units; and

(M) deficiencies in thermostats.

(c) Evaporative coolers. The inspector shall:

(1) report:

(A) type of system(s) (one- or two-speed);

(B) the type of water supply line; and

(C) winterized units that are drained and shut down; and

(2) report as Deficient:

(A) inoperative units;

(B) inadequate access and clearances;

(C) corrosive and mineral build-up or rust damage/decay at the pump, louvered panels, water trays, exterior housing, or the roof frame;

(D) less than a one-inch air gap between the water discharge at the float and water level in the reservoir;

(E) corrosion, decay, or rust on the pulleys of the motor or blower;

(F) the lack of a damper; and

(G) deficiencies in the:

(i) function of the pump;

(ii) interior housing, the spider tubes, tube clips, bleeder system;

(iii) blower and bearings;

(iv) float bracket;

(v) fan belt;

(vi) evaporative pad(s);

(vii) installation and condition of the legs on the roof rails and fasteners to the roof structure and the unit;

(viii) roof jack; and

(ix) thermostats.

(d) Duct system, chases, and vents. The inspector shall report as Deficient:

(1) damaged ducting or insulation, improper material, or improper routing of ducts;

(2) the absence of air flow at accessible supply registers in the habitable areas of the structure;

(3) improper or inadequate clearance from the earth; and

(4) deficiencies in:

(A) duct fans;

(B) filters;

(C) grills or registers;

(D) the location of return air openings; and

(E) gas piping, sewer vents, electrical wiring, or junction boxes in the duct system, plenum(s), and chase(s).

(e) Specific limitations for the heating equipment, cooling equipment, duct system, chases, and vents. The inspector is not required to:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized evaporative coolers; or

(C) humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps when temperatures may damage equipment;

(4) verify:

(A) compatibility of components;

(B) the accuracy of thermostats; or

(C) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) uniformity of the supply of conditioned air to the various parts of the structure; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems. The inspector shall:

(1) report:

(A) static water pressure;

(B) location of water meter; and

(C) location of main water supply valve; and

(2) report as Deficient:

(A) the presence of active leaks;

(B) the lack of fixture shut-off valves;

(C) the lack of dielectric unions, when applicable;

(D) the lack of back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures;

(E) water pressure below 40 psi or above 80 psi static;

(F) the lack of a pressure reducing valve when the water pressure exceeds 80 psi;

(G) the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system; and

(H) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the operation of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(v) functional drainage at fixtures;

(vi) orientation of hot and cold faucets;

(vii) installed mechanical drain stops;

(viii) installation, condition, and operation of commodes;

(ix) fixtures, showers, tubs, and enclosures; and

(x) the condition of the gas distribution system.

(b) Specific limitations for plumbing systems. The inspector is not required to:

(1) operate any main, branch, or shut-off valves;

(2) operate or inspect sump pumps or waste ejector pumps;

(3) inspect:

(A) any system that has been winterized, shut down or otherwise secured;

(B) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(C) the inaccessible gas supply system for leaks;

(D) for sewer clean-outs; or

(E) for the presence or operation of private sewage disposal systems;

(4) determine:

(A) quality, potability, or volume of the water supply; or

(B) effectiveness of backflow or anti-siphon devices; or

(5) verify the functionality of clothes washing drains or floor drains.

(c) Water heaters. The inspector shall:

(1) report the energy source;

(2) report the capacity of the unit(s);

(3) report as Deficient:

(A) inoperative unit(s);

(B) leaking or corroded fittings or tank(s);

(C) broken or missing parts or controls;

(D) the lack of a cold water shut-off valve;

(E) if applicable, the lack of a pan and drain system and the improper termination of the pan drain line;

(F) an unsafe location;

(G) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(H) inappropriate location;

(I) inadequate access and clearances;

(J) the lack of protection from physical damage;

(K) a temperature and pressure relief valve that:

(i) does not operate manually;

(ii) leaks;

(iii) is damaged;

(iv) cannot be tested due to obstructions;

(v) is corroded; or

(vi) is improperly located; and

(L) temperature and pressure relief valve discharge piping that:

(i) lacks gravity drainage;

(ii) is improperly sized;

(iii) has inadequate material; or

(iv) lacks proper termination;

(3) in electric units, report as Deficient deficiencies in:

(A) operation of heating elements; and

(B) condition of conductors; and

(4) in gas units, report as Deficient:

(A) gas leaks;

(B) lack of burner shield(s);

(C) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(D) the lack of a gas shut-off valve; and

(E) deficiencies in:

(i) combustion and dilution air;

(ii) gas shut-off valve(s) and location(s);

(iii) gas connector materials and connections; and

(iv) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(d) Specific limitations for water heaters. The inspector is not required to:

(1) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(2) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(3) determine the efficiency or adequacy of the unit.

(e) Hydro-massage therapy equipment. The inspector shall report as Deficient:

(1) inoperative unit(s) and controls;

(2) the presence of active leaks;

(3) inaccessible pump(s) or motor(s);

(4) the lack or failure of required ground-fault circuit interrupter protection; and

(5) deficiencies in the ports, valves, grates, and covers.

(f) Specific limitation for hydro-massage therapy equipment. The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

(a) Dishwasher. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) rust on the interior of the cabinet or components;

(3) failure to drain properly;

(4) the presence of active water leaks; and

(5) deficiencies in the:

(A) door gasket;

(B) control and control panels;

(C) dish racks;

(D) rollers;

(E) spray arms;

(F) operation of the soap dispenser;

(G) door springs;

(H) dryer element;

(I) door latch and door disconnect;

(J) rinse cap;

(K) secure mounting of the unit; and

(L) backflow prevention.

(b) Food waste disposer. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) unusual sounds or vibration level;

(3) the presence of active water leaks; and

(4) deficiencies in the:

(A) splash guard;

(B) grinding components;

(C) exterior casing; and

(D) secure mounting of the unit.

(c) Range exhaust vent. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) a vent pipe that does not terminate outside the structure, if the unit is not of a re-circulating type or configuration;

(3) inadequate vent pipe material;

(4) unusual sounds or vibration levels from the blower fan(s);

(5) blower(s) that do not operate at all speeds; and

(6) deficiencies in the:

(A) filter;

(B) vent pipe;

(C) light and lens;

(D) secure mounting of the unit; and

(E) switches.

(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) the lack of a gas shut-off valve;

(3) gas leaks; and

(4) deficiencies in the:

(A) controls and control panels;

(B) thermostat(s) sensor support;

(C) glass panels;

(D) door gasket(s), hinges, springs, closure, and handles;

(E) door latch;

(F) heating elements or burners;

(G) thermostat accuracy (within 25 degrees at a setting of 350°F);

(H) drip pans;

(I) lights and lenses;

(J) clearance to combustible material;

(K) anti-tip device;

(L) gas shut-off valve(s) and location(s);

(M) gas connector materials and connections; and

(N) secure mounting of the unit.

(e) Microwave oven. The inspector shall:

(1) inspect built-in units; and

(2) report as Deficient:

(A) inoperative unit(s); and

(B) deficiencies in the:

(i) controls and control panels;

(ii) handles;

(iii) the turn table;

(iv) interior surfaces;

(v) door and door seal;

(vi) glass panels;

(vii) lights and lenses;

(viii) secure mounting of the unit; and

(ix) operation, as determined by heating a container of water or with other means of testing.

(f) Trash compactor. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) unusual sounds or vibration levels; and

(3) deficiencies in the secure mounting of the unit.

(g) Mechanical exhaust vents and bathroom heaters. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) unusual sounds, speed, and vibration levels;

(3) vent pipes that do not terminate outside the structure;

(4) a gas heater that is not vented to the exterior of the structure; and

(5) the lack of an exhaust ventilator in required areas.

(h) Garage door operators. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) door locks or side ropes that have not been removed or disabled; and

(3) deficiencies in:

(A) installation;

(B) condition and operation of the garage door operator;

(C) automatic reversal during the closing cycle;

(D) electronic sensors;

(E) the control button; and

(F) the emergency release components.

(i) Doorbell and chimes. The inspector shall report as Deficient:

(1) inoperable unit(s); and

(2) deficiencies in components.

(j) Dryer vents. The inspector shall report as Deficient:

(1) improper routing and length of vent pipe;

(2) inadequate vent pipe material;

(3) improper termination;

(4) the lack of a dryer vent system when provisions are present for a dryer; and

(5) damaged or missing exterior cover.

(k) Specific limitations for appliances. The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) test trash compactor ram pressure; or

(5) determine the adequacy of venting systems.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

If an inspector agrees to inspect a component described in this section, §535.227 of this title (relating to Standards of Practice: General Provisions) and the applicable provisions below apply.

(1) Lawn and garden sprinkler systems. The inspector shall:

(A) manually operate all zones or stations on the system; and

(B) report as Deficient:

(i) surface water leaks;

(ii) the absence or improper installation of anti-siphon devices and backflow preventers;

(iii) the absence of shut-off valves;

(iv) deficiencies in water flow or pressure at the zone heads;

(v) the lack of a rain or freeze sensor;

(vi) deficiencies in the condition of the control box; and

(vii) deficiencies in the operation of each zone, associated valves, and spray head patterns.

(2) Specific limitations for lawn and garden sprinkler systems. The inspector is not required to inspect:

(A) for effective coverage of the sprinkler system;

(B) the automatic function of the timer or control box;

(C) the effectiveness of the rain or freeze sensor; or

(D) sizing and effectiveness of anti-siphon devices or backflow preventers.

(3) Swimming pools, spas, hot tubs, and equipment. The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) a pump motor, blower, or other electrical equipment that lacks bonding;

(ii) the absence of or deficiencies in safety barriers;

(iii) water leaks in above-ground pipes and equipment;

(iv) deficiencies in lighting fixture(s);

(v) the lack or failure of required ground-fault circuit interrupter protection; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves; and

(V) filters, gauges, pumps, motors, controls, and sweeps; and

(C) when inspecting a pool heater, report deficiencies that these standards of practice require to be reported for the heating system.

(4) Specific limitations for swimming pools, spas, hot tubs, and equipment. The inspector is not required to:

(A) dismantle or otherwise open any components or lines;

(B) operate valves;

(C) uncover or excavate any lines or concealed components of the system or determine the presence of sub-surface leaks;

(D) fill the pool, spa, or hot tub with water;

(E) inspect any system that has been winterized, shut down, or otherwise secured;

(F) determine the presence of sub-surface water tables; or

(G) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(5) Outbuildings. The inspector shall report as Deficient:

(A) the lack of ground-fault circuit interrupter protection in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(B) deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal structure.

(6) Outdoor cooking equipment. The inspector shall:

(A) inspect the built-in equipment; and

(B) report the energy source; and

(C) report as Deficient:

(i) inoperative unit(s);

(ii) a unit or pedestal that is not stable;

(iii) gas leaks; and

(iv) deficiencies in:

(I) operation;

(II) control knobs, handles, burner bars, grills, the box, the rotisserie (if present), and heat diffusion material;

(III) gas shut-off valve(s) and location(s); and

(IV) gas connector materials and connections.

(7) Gas supply systems. The inspector shall:

(A) test gas lines using a local or an industry-accepted procedure; and

(B) report as Deficient:

(i) leaks; and

(ii) deficiencies in the condition and type of gas piping, fittings, and valves.

(8) Specific limitation for gas lines. The inspector is not required to inspect sacrificial anode bonding or for its existence.

(9) Private water wells. The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed water quality or potability testing;

(C) report:

(i) the type of pump and storage equipment; and

(ii) the proximity of any known septic system; and

(D) report as Deficient deficiencies in:

(i) water pressure and flow and operation of pressure switches;

(ii) the condition of visible and accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(10) Specific limitations for private water wells. The inspector is not required to:

(A) open, uncover, or remove the pump, heads, screens, lines, or other components or parts of the system;

(B) determine the reliability of the water supply or source; or

(C) locate or verify underground water leaks.

(11) Private sewage disposal (septic) systems. The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain field; and

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems; and

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible or visible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(12) Specific limitations for individual private sewage disposal (septic) systems. The inspector is not required to:

(A) excavate or uncover the system or its components;

(B) determine the size, adequacy, or efficiency of the system; or

(C) determine the type of construction used.

(13) Whole-house vacuum system. The inspector shall report as Deficient:

(A) inoperative units;

(B) deficiencies in the main unit; and

(C) deficiencies in outlets.

(14) Specific limitations for whole-house vacuum systems. The inspector is not required to:

(A) inspect the attachments or hoses; or

(B) verify that accessory components are present.

(15) Other built-in appliances. The inspector shall report deficiencies in condition or operation of other built-in appliances not listed in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804547
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.21 - 537.23, 537.26, 537.27, 537.33, 537.35, 537.40, 537.46, 537.48, 537.51

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§537.21 - 537.23, 537.26, 537.27, 537.33, 537.35, 537.40, 537.46, and 537.48 to correct the agency web address from www.state.tx.us to www.trec.state.tx.us. TREC also proposes adding new 22 TAC §537.51 concerning Standard Contract Form TREC No. 44-0. The amendment proposes to adopt by reference a new TREC addendum for reservation of oil, gas, and other minerals.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendments to 22 TAC §§537.21 - 537.23, 537.26, 537.27, 537.33, 537.35, 537.40, 537.46, and 537.48 correct the agency web address contained in each rule from www.state.tx.us to www.trec.state.tx.us.

New §537.51 is added to adopt by reference Standard Contract Form TREC No. 44-0, Addendum for Reservation of Oil, Gas, and Other Minerals. The proposed addendum would be used in situations where a seller in a real estate transaction wishes to reserve all or an identified percentage interest in the mineral estate owned by the seller, as defined in the addendum.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§537.21. Standard Contract Form TREC No. 10-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-5 approved by the Texas Real Estate Commission in 2007 for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.22. Standard Contract Form TREC No. 11-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No.11-6 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.23. Standard Contract Form TREC No. 12-2.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 12-2 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.26. Standard Contract Form TREC No. 15-4.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-4 approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a seller temporarily occupies property after closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.27. Standard Contract Form TREC No. 16-4.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-4 approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a buyer temporarily occupies property prior to closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.33. Standard Contract Form TREC No. 26-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-5 approved by the Texas Real Estate Commission in 2006 for use as an addendum concerning seller financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.35. Standard Contract Form TREC No. 28-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.40. Standard Contract Form TREC No. 33-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.46. Standard Contract Form TREC No. 39-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-6 approved by the Texas Real Estate Commission in 2006 for use as an amendment to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.48. Standard Contract Form TREC No. 41-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us [~~www.state.tx.us~~].

§537.51. Standard Contract Form TREC No. 44-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 44-0 approved by the Texas Real Estate Commission in 2008 for reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804548
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.55, concerning Surveying Firms Registration. This section explains the firm registration process.

The amendment will define "full-time employee" as used in the Professional Land Surveying Practices Act and other rules.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will add language to clarify the definition of a full-time employee.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.55. Surveying Firms Registration.

(a) - (e) (No change.)

(f) Any firm furnishing contract land surveying crews must have a registered professional land surveyor as a full-time employee in that firm as reflected in its registration form filed with the board. A full-time employee is an individual employed by a company in an on-going position with a minimum of 35 scheduled work hours per week, 52 weeks per year.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804585
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT
SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.10

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.10, concerning disciplinary rules.

The amendment will clarify that a land surveyor in violation of this rule may only be guilty of one of the behaviors noted.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will add language to clarify the existing rule.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.10. Disciplinary Rules.

The land surveyor shall not:

(1) - (6) (No change.)

(7) perform any acts, allow any omission, or make any assertions or representation which may be [~~are~~] fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression;

(8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandy Smith
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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.17, concerning Monumentation.

The amendment will remove language that is redundant, all monumentation set must comply with subsection (b) of this section.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will remove language that is redundant and is included in another subsection of the rule.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.17. Monumentation.

(a) - (b) (No change.)

(c) All metes and bounds description prepared for easements shall be tied to physical monuments of record related to the boundary of the affected tract. [~~If the land surveyor chooses to monument the easement or is directed to do so by his/her client, such monumentation shall be in compliance with subsection (b) of this section.~~]

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§13.1 - 13.8 and new §§13.1 - 13.3, concerning the recruitment of physicians to underserved areas.

BACKGROUND AND PURPOSE

Federal law (Title 8, United States Code, §1182 and §1184) allows waiver of normal immigration requirements for foreign physicians who agree to provide certain specified types of medical services in this country. The Immigration and Naturalization Services provide these waivers based upon the recommendation of state health departments. This is called the "Conrad 30" program after the original name of the sponsor of the federal legislation and the number of exemptions provided to each state. Corresponding state law (Health and Safety Code, §12.0127) allows the department to implement the Texas Conrad 30 program in Texas. The purpose of the program is to recruit physicians to underserved areas of the state by making a recommendation for the waiver of the two-year home residence requirement for foreign physicians who trained in the United States on a J-1 Exchange Visitor visa. The waiver recommendation comes with a three-year service obligation for the physician to practice in an underserved area. The program is authorized by the federal government to make 30 waiver recommendations per year.

The repeal and new rules are necessary to avoid any possible conflict between the rule and 8 United States Code, §1184. Changes in federal law now allow state Conrad 30 programs to recommend waivers for physicians in areas that were previously ineligible. The new rules allow the program the flexibility to make priorities for waiver recommendations on an annual basis that will be congruous with current and possible future changes in the federal law and policy. The new rules will also allow the program to increase the public health service fee as the cost of administering the program increases.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 13.1 - 13.8 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, the rules are being repealed and proposed as new rules.

SECTION-BY-SECTION SUMMARY

The repeal of §§13.1 - 13.8 eliminates the definition of terms, various rules in regard to employers and employment contracts, and verification of program expectations. New §§13.1 - 13.3 provide flexibility for the department to set priorities for waiver recommendations on an annual basis; assess the public health service fee as the cost of administering the program increases; and set policy on an annual basis according to state need and potential change in federal law. New §13.1 also sets out the criteria the department will follow in setting these priorities.

FISCAL NOTE

Connie Berry, Manager, Primary Care Office, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of $15,000 the first year and between $15,000 and $90,000 each year for years two through five due to the range and possible increase in fees. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Berry has determined that there may be an impact on small businesses and micro-businesses. The department currently receives more than 30 applications each year under this program. All waiver applications are for physicians and the current fee is $2000. Applications not forwarded on to the federal government for review are returned along with the full fee. The proposed amendments permit the program to raise the fee to $2500 - $5000 ($500 - $3000 increase per application) depending on the annual costs of operating the program. The fee may be paid by the physician, employer, or the immigration law firm so it is difficult to ascertain how many applicants fall into each category. Program review of past applicants indicates that 93% of application employers are large health care organizations that hope to employ the physicians accepted under the program. Per Government Code, §2006.001, these organizations are too large to be small businesses (fewer than 100 employees or less than $6 million in annual gross receipts) or micro-businesses (under 20 employees). The remaining 7% of applicants are typically individual physicians, who would qualify as micro-businesses. Per the program review, none of the applicants would qualify as small businesses, although if a small business applied, the impact would be similar to that of a micro-business. The calculation of economic impact is that this will result in approximately two micro-businesses annually paying an additional $500 to $3000 per application.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The department has considered methods of reducing this impact. The option of not charging a fee was considered and rejected because the legislature has indicated their expectation that the program continue. The legislature did not appropriate any money for the operation of the program thus the department assumes it is intended to be self-supporting. The actual impact will be controlled and mitigated by how well the department can control its cost for the operation of the program because the fees will be based upon these costs. Other changes in the rule enlarge the pool of potential applicants, thus potentially achieving a better economy of scale in the operation of the program. There will be no impact on local employment.

PUBLIC BENEFIT

Ms. Berry has been determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is recruitment of physicians to a wider range of eligible locations, and continued fee revenue necessary for this program to remain self-sufficient.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Connie Berry, Primary Care Office, Mail Code: 1937, Community and Family Health Services Division, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7518, or by e-mail to Connie.Berry@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. WAIVER OF VISA RECOMMENDATION FOR PHYSICIANS

25 TAC §§13.1 - 13.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §12.0127, which requires the department to charge fees for a favorable recommendation by the Conrad 30 program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§13.1. Definition of Terms.

§13.2. J-1 Visa Waiver Rules.

§13.3. Employer Rules.

§13.4. Site Requirements.

§13.5. Contract.

§13.6. Verification.

§13.7. Application Fee.

§13.8. Other Federal or State Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804490
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. RECRUITMENT OF PHYSICIANS TO UNDERSERVED AREAS

25 TAC §§13.1 - 13.3

STATUTORY AUTHORITY

The proposed new rules are authorized by Health and Safety Code, §12.0127, which requires the department to charge fees for a favorable recommendation by the Conrad 30 program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed new rules affect the Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§13.1. Priorities for Waiver Recommendations.

(a) It is the intent of the Legislature that applications submitted under this program be prioritized by the Department of State Health Services (department) to the areas of greatest need and that the department consider relative specialty need as well, adhering to federal and state legislation (Health and Safety Code, §12.0127), therefore the Texas Conrad 30 program will identify priorities for waiver recommendations for the coming year, and publish them on the Texas Conrad 30 website at http://www.dshs.state.tx.us/chpr/j1info.shtm, prior to May 1 of each year.

(b) The following criteria will be applied in prioritizing applications for waiver recommendations:

(1) regular applications may be considered and approved before some or all flexible applications are considered;

(2) some flexible applications may be approved based on considerations of the date the application is received by the department;

(3) flexible applications may be considered only if there are less than 30 regular applications;

(4) the number of flexible applications approved will be limited to no more than the number allowed by federal or state law but may be less than the number allowed by federal law;

(5) the needs of medically underserved areas will always be of importance in establishing the department's priorities; and

(6) the department will operate the program to conform to federal law as it may be amended.

§13.2. Application Fee.

The department shall collect a fee of $2500 to $5000 from each applicant who is granted a waiver of the two-year home residency requirement from the Bureau of Citizenship and Immigration Services. The Texas Conrad 30 program has the option to assess the fee each year based on the cost of operating the program. The amount of the application fee will be identified on the Texas Conrad 30 program website at http://www.dshs.state.tx.us/chpr/j1info.shtm by May 1 of each year. The fee shall be submitted to the department at the time of application. Part of the fees may be returned under the following circumstances:

(1) if the department recommends the waiver to the U.S. Department of State, none of the application fee will be returned to the applicant;

(2) if the applicant withdrawals the application before a recommendation is submitted by the department, 50% of the application fee will be returned to the applicant; or

(3) if at the time the application is received by the department, all 30 slots have been used for the fiscal year, 100% of the application fee will be returned to the applicant.

§13.3. Other Federal or State Requirements.

All waiver request applications must meet federal laws Title 8, United States Code, §1184, and relevant provisions in Health and Safety Code, Chapter 12.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804491
Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

The Texas Commission on Environmental Quality (TCEQ, agency or commission) proposes amendments to §§37.9001, 37.9030, 37.9035, 37.9040, 37.9045, and 37.9050.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), and House Bill (HB) 3838, 80th Legislature, 2007. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The proposed amendments to Chapter 37 establish the financial assurance requirements for licenses for source material recovery, by-product disposal, aquifer restoration, and radioactive substances storage and processing. The commission proposes that the existing financial assurance requirements of Chapter 37, Subchapter T be used for the licensing programs subject to the transfer of jurisdiction in SB 1604. SB 1604 also establishes a new state fee for disposal of radioactive substances and amends UIC requirements for uranium mining.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 39, 55, 305, 331, and 336.

SECTION BY SECTION DISCUSSION

The commission proposes an amendment to the title of Subchapter S by changing the name from "Financial Assurance for Radioactive Material" to "Financial Assurance for On Site Disposal of Radioactive Substances" to be more accurate. Prior to SB 1604, the commission had responsibilities under TRCA only for certain disposal activities. SB 1604 provides the TCEQ with additional regulatory and licensing responsibilities for source material recovery and commercial radioactive substances storage and processing.

The commission proposes an amendment to §37.9001 to clarify that the financial assurance requirements of Subchapter S only apply to radioactive material licenses for alternative methods of disposal of radioactive material under 30 TAC Chapter 336, (Radioactive Substance Rules), Subchapter F and licenses for the commercial disposal of naturally occurring radioactive material waste from public water systems under Chapter 336, Subchapter K. The financial assurance requirements of Chapter 37, Subchapter T will apply to decommissioning of facilities under Chapter 336, Subchapter G, licenses for the disposal of low-level radioactive waste under Chapter 336, Subchapter H, licenses for the recovery of source material and by-product material disposal under Chapter 336, Subchapter L, and licenses for the processing and storage of radioactive substances under Chapter 336, Subchapter M, Licensing of Radioactive Substances Processing and Storage Facilities.

The commission proposes an amendment to §37.9030 to establish financial assurance requirements under Chapter 37, Subchapter T for decommissioning activities under Chapter 336, Subchapter G, licenses for the disposal of low-level radioactive waste under Chapter 336, Subchapter H, licenses for the recovery of source material or by-product disposal under Chapter 336, Subchapter L, and licenses for the storage and processing of radioactive substances under Chapter 336, Subchapter M. The primary difference between Subchapter S and Subchapter T of Chapter 37 is that there are additional requirements for the use of insurance as a financial assurance mechanism under Subchapter T. The commission proposes to use the more stringent Subchapter T financial assurance requirements for the licensing programs that are subject to the transfer of SB 1604 so that there is enhanced assurance that the state has adequate funds to perform closure or post closure activities should a licensee fail to perform the required activities.

The commission proposes an amendment to §37.9035 to change the definition of "Closure" to include a reference to aquifer restoration instead of groundwater restoration to be consistent with terminology in 30 TAC §331.2, Definitions. The commission further proposes an amendment to change the definition of "Facility" to be synonymous with the term "Site" as defined in §336.702 and include the recovery of source material under Chapter 336, Subchapter L or the processing and storage of radioactive substances under Chapter 336, Subchapter M.

The commission proposes an amendment to §37.9040 to require that effective financial assurance mechanisms must be provided to the executive director 60 days prior to the initial receipt, production, or possession of radioactive substances. Financial assurance for aquifer restoration shall be required 60 days prior to injection of mining fluid.

The commission proposes an amendment to §37.9045(a)(4) to reference appropriate subchapters of Chapter 336. An amendment is proposed to §37.9045(a)(6) to include citations to §336.1125 and §336.619 should the executive director be required to convert a financial assurance mechanism into cash for deposit into the perpetual care account. The commission proposes an amendment to add a new subsection (b) requiring that financial assurance for aquifer restoration be provided in at least the amount required under each production area authorizations. The commission is proposing corresponding amendments to Chapter 331 to require that an applicant for a production area authorizations include, as part of the application, a cost estimate

for restoring groundwater within the entire production area. Although the cost estimates for aquifer restoration are included as part of the UIC program's production area authorizations, the requirement to have financial assurance for aquifer restoration is part of the radioactive materials license under Subchapter L of Chapter 336. The commission believes that the evaluation of cost estimates for the amount of financial assurance required for aquifer restoration of an entire production area should be included as part of the production area authorizations application and subject to opportunities for public participation in the application process rather than the provision of financial assurance on a well field by well field basis within each production area and outside of an application process. Proposed subsection (b) also provides the executive director with the flexibility to use financial assurance for aquifer restoration of any production area under the same area permit. Existing subsection (b) is proposed to be relettered as subsection (c).

The commission proposes an amendment to §37.9050 to provide for the financial test and the parent company guarantee financial assurance mechanisms for Chapter 336, Subchapter M. The financial test was an option available under the Department of State Health Services (DSHS or Department) rules for licensees for storage and processing. The parent company guarantee was also an option available under the Department rules. Therefore, the commission proposes a provision in Subchapter T, §37.9050 to provide for wording similar to the Department rule in 25 TAC §289.252(ii)(3). THSC, §401.109(b) states that the commission shall require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission. THSC, §401.109(c) states that the amount and type of security required shall be determined under agency rules and lists criteria. The financial test is considered other security acceptable to the agency as stated in THSC, §401.109(d)(7). This financial assurance mechanism already existed in the Department rule in 25 TAC §289.252(ii)(3) and the commission now proposes a similar rule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the DSHS (or Department) due to administration or enforcement of the proposed changes to the Chapter 37 rules. The proposed changes to Chapter 37 are part of a larger proposal to implement the second phase of the transfer of certain regulatory responsibilities for radioactive waste from DSHS to the TCEQ as required by SB 1604, 80th Legislature, 2007. The second phase rulemaking also incorporates changes required by HB 3838, 80th Legislature, 2007, relating to in situ uranium mining. The 80th Legislature provided additional staff and funding to the TCEQ to implement the transfer of the regulatory responsibilities. The Chapter 37 amendments are anticipated to result in fiscal implications for entities involved in commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal (disposal of uranium mine and mill tailings and waste).

The primary purpose of the proposed rules is to implement SB 1604. The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from DSHS to the commission. Technical requirements for these programs have been transferred from the Department's rules into new subchapters of the commission's radioactive substance rules in Chapter 336. The proposed amendments to Chapter 37 establish the financial assurance requirements for licenses for uranium recovery, by-product disposal, aquifer restoration, and radioactive substances storage and processing. The commission proposes that the existing financial assurance requirements of Subchapter T of Chapter 37 be used for the licensing programs subject to the transfer of jurisdiction in SB 1604.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

Fiscal implications are anticipated for businesses as a result of the proposed changes to the Chapter 37 financial assurance rules.

The proposed changes to financial assurance requirements will apply to source material recovery and by-product material disposal facilities including source material recovery sites (uranium mining, including aquifer restoration financial assurance) and by-product material disposal, both at existing Title II sites with by-product material impoundments, and sites with dedicated by-product material disposal units. In addition, commercial facilities that store and/or process radioactive waste from other persons including low-level radioactive waste, by-product material, naturally occurring radioactive material waste and mixed waste will also be affected by the proposed changes to financial assurance requirements.

The commission proposes to use the more stringent financial assurance requirements for the licensing programs that are subject to the transfer of SB 1604 so that there is enhanced assurance that the state has adequate funds to perform closure or post closure activities should a licensee fail to perform the required activities. The proposed changes would preclude the use of a financial test or a corporate guarantee to meet financial assurance requirements, except for Chapter 336, Subchapter M. At this time, it is estimated that there are two companies that currently use the financial test or corporate guarantee for financial assurance. In order for these two companies to meet the more stringent financial assurance requirements, their costs will increase by an estimated 1% of the total amount of their financial assurance. For Waste Control Specialists, the current financial assurance amount is approximately $5.1 million, so their costs are estimated to increase by $51,000. For Conoco Phillips, their current financial assurance amount is estimated to be approximately $4.7 million, so their costs are estimated to increase by $47,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. The changes proposed are part of a larger proposal to revise the commission's radiation control rules. The proposed amendments to Chapter 37 establish the financial assurance requirements for licenses for uranium recovery, by-product disposal, aquifer restoration, and radioactive substances storage and processing. No known small or micro-businesses are anticipated to be affected by the proposed Chapter 37 amendments.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required in order to implement SB 1604 and HB 3838.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the department to the commission. The proposed amendments to Chapter 37 establish the financial assurance requirements for radioactive material licenses for source material recovery, by-product disposal and commercial radioactive substances storage and processing. Financial assurance was already required by the DSHS prior to the transfer of these programs to the commission. The proposed rules implement financial assurance requirements that utilize financial instruments approved by the TCEQ, determine the timing for establishing financial assurance, and the triggers for the commission to call upon posted financial assurance. The proposed amendments to Chapter 37 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because financial assurance was already required for these licensing programs. The amendments only change requirements for how financial assurance is administered by the commission including the type and wording of allowable financial instruments, the timing for establishing financial assurance, and the triggering events for calling financial assurance. While there could be new costs associated with obtaining a financial assurance mechanism that meets the requirements of the proposed rules, the commission does not expect that the costs to adversely affect the economy, productivity, or competition in a material way. The proposed rulemaking action also amends technical requirements for these licensing programs and establishes fees for applications and waste disposal in Chapter 336, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends public notice requirements in Chapter 39, amends public participation requirements in Chapter 55, and amends application requirements and injection well permit term limits in Chapter 305.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 1604.

The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended,* NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are proposed under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the Private Real Property Rights Preservation Act does not apply to these proposed rules because these proposed rules implement SB 1604, transferring certain regulatory responsibilities from the department to the commission and is an action reasonably taken to fulfill an obligation mandated by federal law. Financial assurance is required for these licensing programs under the NRC's requirements.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these proposed rules is to implement changes to the TRCA required by SB 1604, 80th Legislature, 2007, for the establishment of financial assurance for licenses disposal of by-product material, recovery of source material, and commercial radioactive substances processing and storage. The proposed rules to Chapter 37 would substantially advance this purpose by establishing the financial assurance requirements for the licenses that are subject to the transfer of jurisdiction under SB 1604.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules establish financial assurance requirements and do not affect real property. Financial assurance was already required by DSHS prior to the transfer of these programs to the commission. Therefore, the proposed rules do not affect real property in a manner that is different than may have been affected under the department's requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

SUBCHAPTER S. FINANCIAL ASSURANCE FOR ON SITE DISPOSAL OF RADIOACTIVE SUBSTANCES

30 TAC §37.9001

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§37.9001. Applicability.

This subchapter applies to an owner or operator, including a state or federal government owner or operator, required to provide evidence of financial assurance under Chapter 336, Subchapter F or K of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material; Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems, respectively) [~~Radioactive Substance Rules), except owners or operators of a facility~~

~~licensed under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste)~~]. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804550
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION

30 TAC §§37.9030, 37.9035, 37.9040, 37.9045, 37.9050

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, as amended by Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§37.9030. Applicability.

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapters G, H, L, or M [~~Subchapter H~~] of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; or Licensing of Radioactive Substances Processing and Storage Facilities). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, corrective action, and liability coverage.

§37.9035. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) Annual review--Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) Closure--Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer [~~groundwater~~] restoration, stabilization, monitoring, or post closure observation and maintenance.

(3) Corrective action--The activities to remediate unplanned events that pose a risk to public health, safety, and the environment and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility.

(4) Facility--The term "Facility" has the same meaning as the term "Site" as defined in §336.702 of this title (relating to Definitions). Facility also means all [~~All~~] contiguous land, water, buildings, structures, and equipment which are or were used for activities associated with:

(A) the disposal of radioactive material, including disposal, receipt, storage, processing, or handling of radioactive material, waste, soil, and groundwater contaminated by radioactive material; [~~. The term "Facility" has the same meaning as the term "Site" as defined in §336.702 of this title.~~]

(B) the recovery of source material as provided in Chapter 336, Subchapter L of this title (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities); or

(C) the processing and storage of radioactive substances as provided in Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(5) Institutional control--Shall have the same meaning as post closure.

(6) Licensee--Shall have the same meaning as owner, operator, or license holder.

(7) Post closure--The activities that are identified as institutional control as specified in §336.734 of this title (relating to Institutional Requirements).

§37.9040. Submission of Documents.

An owner or operator required by this subchapter to provide financial assurance for closure, post closure, corrective action, and liability coverage must submit originally signed and effective financial assurance mechanisms to the executive director 60 days prior to the initial receipt, production or possession of radioactive substances or injection of mining fluid [~~waste~~].

§37.9045. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure, post closure, and corrective action of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9050 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure, post closure, and corrective action. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms as specified in §37.9050 of this title.

(4) The executive director may accept financial assurance established to meet requirements of other federal, state agencies, or local governing bodies for closure or post closure, provided such mechanism complies with the requirements of this chapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Chapter 336, Subchapters G, H, L and M [~~Subchapter H~~] of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; and Licensing of Radioactive Substances Processing and Storage Facilities).

(5) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the owner or operator does not provide acceptable replacement financial assurance within the required time prior to the expiration, cancellation, or termination of the financial assurance mechanism, the financial assurance provider shall pay the face amount of the financial assurance into the perpetual care account.

(6) All financial assurance required to be converted to cash by direction of the executive director under §§336.619, 336.736 - 336.738, 336.1125, 336.1235, and 37.101 of this title (relating to Financial Assurance for Decommissioning; Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action; Financial Security Requirements; Financial Assurance for Storage and Processing; and Drawing on the Financial Assurance Mechanisms) and paragraph (5) of this subsection shall be deposited to the credit of the perpetual care account.

(b) Financial assurance for aquifer restoration shall be provided in an amount no less than the cost estimate for aquifer restoration approved for each production area authorization. The executive director shall have discretion to apply financial assurance approved for one production area to the restoration of any other production area.

(c) [~~(b)~~] The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Financial Institutions), except financial assurance must be established within 30 days after such an event.

§37.9050. Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except within 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment) except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(e) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

(f) An owner or operator may satisfy the requirements of financial assurance by obtaining insurance that conforms to the requirements of this subsection, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action, respectively), and submitting an originally-signed endorsement to the insurance policy to the executive director.

(1) At a minimum, the insurer on the policy must be authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and have a minimum financial strength rating of "A" and a financial size category of "XV" as assigned by the A.M. Best Company.

(2) The insurance policy must designate the commission as an additional insured.

(3) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(4) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. The policy must also provide that the insurer shall pay the face amount of the insurance policy into the perpetual care account if the executive director does not approve acceptable replacement financial assurance within 90 days of receiving notice by certified mail from the insurer of its election to cancel, terminate, or not renew the policy.

(5) The insurance policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

(6) The wording of the endorsement to the insurance policy must be identical to the wording specified in §37.9052 of this title (relating to Endorsement).

(7) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure, post closure, or corrective action, except when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms). Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(8) The insurance policy must guarantee that funds shall be available to provide for closure, post closure, or corrective action of the facility. The policy shall also guarantee that once closure, post closure, or corrective action begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(9) An owner or operator or any other person authorized to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or are otherwise justified and, if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of closure, post closure, or corrective action over the remaining life of the facility will be greater than the face amount of the policy, the executive director may withhold reimbursement of such amounts as deemed prudent until the executive director determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain financial assurance requirements for closure, post closure, or corrective action of the facility. If the executive director does not instruct the insurer to make such reimbursements, the executive director shall provide the owner or operator with a detailed written statement of reasons.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon issue yield announced by the United States Treasury for 26-week Treasury securities.

(11) Upon notification by the executive director that the institutional control period has begun, the insurer will pay the remaining face amount of the policy to the perpetual care account.

(g) This subsection applies only to owner or operators required to provide financial assurance under Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities). Owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria or paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than $10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15; and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in §37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title (relating to Trust Fund) in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(h) This subsection only applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title. A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate guarantee as specified in §37.261 of this title. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization of each signatory.

(i) A parent company guarantee may not be used in combination with other financial assurance mechanisms to satisfy the requirements of this subchapter. A financial test by the owner or operator may not be used in combination with any other financial assurance mechanisms to satisfy the requirements of this subchapter or in any situation where the owner or operator has a parent company holding majority control of the voting stock of the company.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§39.403, 39.651, 39.653, 39.702, 39.703, and 39.707. The commission also proposes new §39.655.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), Texas Water Code (TWC), Chapter 27 (also known as the Injection Well Act), and House Bill (HB) 3838, 80th Legislature, 2007. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB

3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery.

The proposed rules to Chapter 39 amend public notice requirements for applications for radioactive materials licenses, injection well permits and production area authorizations, and aquifer exemptions. The proposed rules clarify requirements for public notice of radioactive materials licenses, add requirements for the provision of public notice for injection well permits and production area authorizations to mineral interest owners and groundwater conservation districts, and establish specific requirements for public notice of aquifer exemptions.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 55, 305, 331, and 336.

SECTION BY SECTION DISCUSSION

The commission proposes an amendment to §39.403 to establish public notice requirements for aquifer exemptions. Under §331.13, the commission may identify exempted aquifers after notice and opportunity for a public hearing. However, there are no specific rules in Chapter 39 that specify the public notice requirements applicable to the designation of exempted aquifers. Section 39.403 is proposed to be amended to apply the public notice requirements of Chapter 39 to the designation of aquifer exemptions.

The commission proposes to amend §39.403(a) to include "of this Section" to conform to *Texas Register* requirements. The commission proposes to amend §39.403(b)(9) to correct the reference of Chapter 116, Subchapter C to Chapter 116, Subchapter E.

The commission proposes an amendment to §39.651 to address public notice requirements for Class III injection well permits. The proposed amendment would require that mailed notice of Class III injection well permits be mailed to persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant; landowners adjacent to the property on which the existing or proposed injection well facility is or will be located; persons who own mineral rights underlying the existing or proposed injection well facility; and persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located. Currently, the requirement to provide mailed notice to mineral interest owners applies only to Class I injection well (waste disposal well) permits, and the commission intends to apply these same requirements to Class III injection well (wells used for the extraction of minerals) permit applications. In addition, under the proposed amendment mailed notice of both Class I and Class III injection well permit applications would be provided to any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located. These proposed mailed notice requirements would apply to the Notice of Receipt of Application and Intent to Obtain a Permit under §39.651(c), the Notice of Application and Preliminary Decision under §39.651(d), and Notice of Contested Case Hearing under §39.651(f).

The commission proposes an amendment to §39.653 to provide similar mailed notice requirements for applications for production area authorizations. The proposed amendment would require that mailed notice be provided to persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant; landowners adjacent to the property on which the existing or proposed production area is or will be located; persons who own mineral rights underlying the existing or proposed production area and persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located. In addition, under the proposed amendment, the public notices under §39.653 would be provided to any groundwater conservation district established in the county in which the existing or proposed production area is or will be located. The commission proposes to amend §39.653(d)(1) to replace the acronym "SOAH" with "the State Office of Administrative Hearings."

The commission proposes new §39.655 to establish public notice requirements for an aquifer exemption. Under proposed new §39.655 specific notice requirements would apply to a Notice of Aquifer Exemption, any Notice of Public Meeting on Aquifer Exemption, and any Notice of Contested Case on Aquifer Exemption. The commission proposes that the manner for newspaper publication of the notice of aquifer exemption be the same as required for the Notice of Application and Preliminary Decision of the injection well permit application associated with the aquifer exemption. And similarly, the recipients of the notice of aquifer exemption should be the same as required for the Notice of Application and Preliminary Decision of the injection well permit application associated with the aquifer exemption.

The commission proposes an amendment to §39.702 to establish that applications for initial issuance, major amendment, or renewal of a license under Chapter 336 are subject to Notice of Declaration of Administrative Completeness. Applications for minor amendments are not subject to this requirement.

The commission proposes an amendment to §39.703 to clarify that the deadline to file public comment for minor amendments is either ten days from mailing of the public notice by the Office of the Chief Clerk, or ten days from the date of publication in the *Texas Register* for those applications for minor amendments of licenses for Chapter 336, Subchapters H and M.

The commission proposes an amendment to §39.707 to correct the title of Subchapter L in subsection (a).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the Texas Department of State Health Services (DSHS or Department) due to administration or enforcement of the proposed changes to the Chapter 39 rules. The proposed changes to Chapter 39 are part of a larger proposal to implement the second phase of the transfer of certain regulatory responsibilities for radioactive waste from DSHS to the TCEQ as required by SB 1604, 80th Legislature, 2007. The second phase rulemaking also incorporates changes required by HB 3838, 80th Legislature, 2007, relating to in situ uranium mining. The 80th Legislature provided additional staff and funding to the TCEQ to implement the transfer of the regulatory responsibilities. Fiscal implications are not anticipated for entities involved in commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal (disposal of uranium mine and mill tailings and waste)

as a result of the administration or enforcement of the Chapter 39 rule revisions.

The primary purpose of the proposed rules is to implement SB 1604. The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from DSHS to the commission. Technical requirements for these programs have been transferred from the Department's rules into new subchapters of the commission's radioactive substantive rules in Chapter 336.

The proposed amendments to Chapter 39 establish the public notice requirements for applications for aquifer exemptions and specify who is to receive notification for applications for production area authorizations and permit applications for Class III injection wells for uranium recovery.

Under the proposed rules, the agency will notify local groundwater conservation districts regarding permit applications for Class III injection wells and will notify property owners, adjacent landowners, mineral rights owners, and local groundwater conservation districts regarding applications for production area authorizations. The proposed rules also provide public notice requirements for the designation of an aquifer exemption. The additional notification requirements are not expected to result in significant fiscal implications for the agency.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

No fiscal implications are anticipated for businesses or individuals as a result of the proposed changes to the Chapter 39 public notice requirements.

Under the proposed rules, the agency will notify local groundwater conservation districts regarding permit applications for Class III injection wells and will notify property owners, adjacent landowners, mineral rights owners, and local groundwater conservation districts regarding applications for production area authorizations. The proposed rules also provide public notice requirements for the designation of an aquifer exemption.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. The changes proposed are part of a larger proposal to revise the commission's radiation control rules. The proposed revisions to Chapter 39 establish the public notice requirements for applications for aquifer exemptions and specify who is to receive notification for applications for production area authorizations and permit applications for Class III injection wells for uranium recovery. No small or micro-businesses are anticipated to be affected by the proposed Chapter 39 revisions.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required in order to implement SB 1604 and HB 3838.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department to the commission and amends the UIC program requirements for in situ recovery of uranium. The proposed rules to Chapter 39 amend public notice requirements for applications for radioactive materials licenses, injection well permits and production area authorizations, and aquifer exemptions. The proposed rules clarify requirements for public notice of radioactive materials licenses, add requirements for the provision of public notice for injection well permits and production area authorizations to mineral interest owners and groundwater conservation districts, and establish specific requirements for public notice of aquifer exemptions. The proposed rules to Chapter 39 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rules apply only to procedural requirements for providing public notice. The proposed rulemaking action also amends technical requirements for the radioactive material licensing programs and establishes fees for applications and waste disposal in Chapter 336, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in Chapter 37, amends public participation requirements in Chapter 55, and amends application requirements in Chapter 305.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes to public notice for injection well permits, production area authorizations, and exempt aquifers do not exceed a standard of federal law or requirement of a delegation agreement. The proposed rules do not exceed a federal standard and are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §5.553, requires the commission to establish requirements for public notice by rule. The purpose of the rulemaking is to implement public notice requirements consistent with THSC, Chapter 401 and TWC, Chapters 5 and 27.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended,* NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." The commission's UIC program is authorized by the United States Environmental Protection Agency, and the public notice requirements are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. TWC, §27.019 requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §5.553 requires the commission to establish requirements for the form, content and manner of publication of public notice.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to provide clarifying changes to the public notice requirements for radioactive material licenses, to require public notice of injection well activities to mineral interest owners and groundwater conservation districts, and to establish public notice requirements for aquifer exemptions. The proposed rules to Chapter 39 would substantially advance this purpose by amending the commission public notice requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules amend public notice requirements for permit and license applications and do not affect real property. The proposed rules only amend specific requirements for how public notice is provided and do not establish new permitting or licensing programs. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should refer-

ence Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.403

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - E of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications; Public Notice of Air Quality Applications; and Public Notice of Other Specific Applications). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits). The effective date of the amendment of existing §39.403, specifically with respect to subsection (c)(9) and (10) <u>of this section</u>, is June 3, 2002. Applications for modifications filed before this amended section becomes effective will be subject to this section as it existed prior to June 3, 2002.

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsections (d) and (e) of this section specify that only certain sections apply to applications for radioactive materials licenses or voluntary emission reduction permits.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations <u>or exempted aquifers</u> under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (e) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

(A) construction of any new facility as defined in §116.10 of this title (relating to General Definitions);

(B) modification of an existing facility as defined in §116.10 of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or

(C) other changes when the executive director determines that:

(i) there is a reasonable likelihood for emissions to impact a nearby sensitive receptor;

(ii) there is a reasonable likelihood of high nuisance potential from the operation of the facilities;

(iii) the application involves a facility or site for which the compliance history contains violations which are unresolved or constitute a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process; or

(iv) there is a reasonable likelihood of significant public interest in a proposed activity;

(9) applications subject to the requirements of Chapter 116, Subchapter E[C] of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;

(11) applications for voluntary emission reduction permits under THSC, §382.0519;

(12) applications for permits for electric generating facilities under Texas Utilities Code, §39.264;

(13) applications for multiple plant permits (MPPs) under THSC, §382.05194; and

(14) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in subsection (b)(10) of this section;

(7) applications under §39.15 of this title (relating to Public Notice Not Required for Certain Types of Applications) without regard to the date of administrative completeness;

(8) applications for minor amendments under §305.62(c)(2) of this title (relating to Amendment). Notice for minor amendments shall comply with the requirements of §39.17 of this title (relating to Notice of Minor Amendment) without regard to the date of administrative completeness;

(9) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(10) applications for modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Notice for modifications shall comply with the requirements of §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness;

(11) applications for Class 2 modifications of industrial or hazardous waste permits under §305.69(c) of this title. Notice for Class 2 modifications shall comply with the requirements of §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 and §305.69(c) of this title;

(12) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee);

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title;

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice); or

(15) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-Injection Units Registration).

(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (re-

lating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title; §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice).

(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), submitted on or before January 1, 2018, are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804552
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §§39.651, 39.653, 39.655

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new section are proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendments and new section are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments and new section implement Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain a Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For notice of receipt of application and intent to obtain a permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; [~~and~~]

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located ; and [~~.~~]

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility; [~~and~~]

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located ; and [~~.~~]

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste or Class III injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(III) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility; [~~and~~]

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and [~~.~~]

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

§39.653. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of Receipt of Application and Intent to Obtain Permit. After the executive director determines that the application is administratively complete, notice shall be given as required by §39.418 of this title (relating to Notice of Receipt and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (12) of this title (relating to Text of Public Notice). The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(c) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. The notice shall specify the deadline to file with the chief clerk public comment, which is 30 days after mailing. The chief clerk shall also mail notice to:

(1) persons who own the property on which the existing or proposed production area is or will be located, if different from the applicant;

(2) landowners adjacent to the property on which the existing or proposed production area is or will be located;

(3) persons who own mineral rights underlying the existing or proposed production area;

(4) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed production area is or will be located; and

(5) any groundwater conservation district established in the county in which the existing or proposed production area is or will be located.

(d) Notice of contested case hearing.

(1) This subsection applies if an application is referred to the State Office of Administrative Hearings [~~SOAH~~] for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(f)(2) of this title.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(4) Notice under paragraphs (2) and (3) this subsection shall be completed at least 30 days before the hearing.

§39.655. Aquifer Exemption.

(a) Applicability. This section applies to the designation of an exempt aquifer under §331.13 of this title (relating to Exempted Aquifer).

(b) Notice of Aquifer Exemption. Notice of Aquifer Exemption shall be published once in a newspaper or newspapers in the same manner as required for the Notice of Application and Preliminary Decision for an injection well permit application associated with the proposed aquifer exemption under §39.651(d) of this title (relating to Application for Injection Well Permit). This notice must contain the text as required by §39.411(c)(1) - (6) of this title (relating to Text of Public Notice). The chief clerk shall mail this notice to the persons who would receive the Notice of Application and Preliminary Decision for an injection well permit application associated with the proposed aquifer exemption under §39.651(d) of this title. The deadline for submitting public comments or requesting a contested case hearing on an aquifer exemption is 30 days after newspaper publication.

(c) Notice of Public Meeting on Aquifer Exemption. Notice of a Public Meeting on Aquifer Exemption shall be published in a newspaper or newspapers in the same manner as required for the Notice of Public Meeting for an injection well permit application associated with the proposed aquifer exemption under §39.651(e) of this title. This notice must contain the text as required by §39.411(d) of this title. The chief clerk shall mail this notice to the persons required to receive the Notice of Public Meeting for an injection well permit application associated with the proposed aquifer exemption under §39.651(e) of this title.

(d) Notice of Contested Case Hearing on Aquifer Exemption. This section applies if an application to designate an exempt aquifer is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings). Notice of contested case hearing on Aquifer Exemption shall be published in a newspaper or newspapers in the same manner as required for the notice of contested case hearing for an injection well permit application associated with the proposed aquifer exemption under §39.651(f) of this title. This notice must contain the text as required by §39.423 of this title (relating to Notice of Contested Case Hearing). The chief clerk shall mail this notice to the persons required to receive the Notice of Contested Case Hearing for an injection well permit application associated with the proposed aquifer exemption under §39.651(f) of this title.

(e) Combined notice. Notice required under this section may be combined to satisfy other applicable sections of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.702, 39.703, 39.707

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive

Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§39.702. Notice of Declaration of Administrative Completeness.
When an application for a license, major amendment, or renewal of a license under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice under this subchapter. The applicant shall publish the notice of declaration of administrative completeness as provided in §39.707 of this title (relating to Published Notice).

§39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules), notice must be mailed by the Office of the Chief Clerk and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For application for a minor amendment to a license issued under Chapter 336[~~,~~] of this title notice must be mailed by the Office of the Chief Clerk under this subchapter. The deadline to file public comment is ten days after mailing, or ten days after publication in the *Texas Register* for minor amendments to a license issued under Chapter 336, Subchapter H or M of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Radioactive Substances Processing and Storage Facilities, respectively).

§39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), Subchapter L of this title (relating to Licensing of Source Material [~~Uranium~~] Recovery and By-Product [~~By-product~~] Material Disposal Facilities), or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), on completion of technical review and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice must include a statement that the draft license is available for review on the commission's Web site and that the draft license and application materials are available for review at the offices of the commission and in a public place in the county or counties in which the proposed disposal facility site is located. Notice must be published in a newspaper of general circulation in each county in which the proposed disposal facility site is located.

(c) In addition to published notice requirements in subsection (b) of this section, for an initial notice of draft license and opportunity to comment and for any subsequent license amendment of a license under Chapter 336, Subchapter H of this title or Subchapter M of this title, the chief clerk shall publish notice once in the *Texas Register.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §55.201.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), Texas Water Code (TWC), Chapter 27 (also known as the Injection Well Act), and House Bill (HB) 3838, 80th Legislature, 2007. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements,

and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The proposed rulemaking action implements legislative requirements in SB 1604, establishing requirements for production area authorizations for in situ recovery of uranium.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 305, 331, and 336.

SECTION DISCUSSION

The commission proposes to amend §55.201 to implement TWC, §27.0513(d), which was added to the TWC through passage of SB 1604. Under proposed §55.201(i)(11), there is no opportunity for a contested case hearing on an application for a production area authorization, unless the authorization seeks to amend a restoration table value as provided in 30 TAC §331.107(g), addresses the initial establishment of monitor wells unless the executive director uses the recommendations of an independent third-party expert, or amends the type or amount of financial assurance required for groundwater restoration or plugging and abandonment. Qualifications and requirements for the use of an independent third-party expert are addressed elsewhere in this rulemaking. The commission does point out that the requirements of TWC, §27.0513(d)(3) do not apply to the initial establishment of the cost estimates for aquifer restoration or plugging and abandonment of wells. And, under existing permit and radioactive material licensing program requirements, the amount of required financial assurance for closure activities including aquifer restoration and well plugging abandonment can be increased without the submission of a license, permit, or production area authorization application. That is, the permits, licenses and rules require automatic increases based on current cost estimates for the various activities requiring financial assurance. Furthermore, the commission does not consider the intent of this rule to apply to pure economic adjustments in the amount of financial assurance based solely on the annual inflation rate adjustment required under 30 TAC §37.131 or reductions in the amount of financial assurance required when the permittee or licensee performs the activity for which financial assurance is required.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, fiscal implications are anticipated for the agency and the Texas Department of State Health Services (DSHS or Department) due to administration or enforcement of the proposed changes to the Chapter 55 rule. The proposed changes to Chapter 55 are part of a larger proposal to implement the second phase of the transfer of certain regulatory responsibilities for radioactive waste from DSHS to the TCEQ as required by SB 1604, 80th Legislature, 2007. The second phase rulemaking also incorporates changes required by HB 3838, 80th Legislature, 2007, relating to in situ uranium mining. The 80th Legislature provided additional staff and funding to the TCEQ to implement the transfer of the regulatory responsibilities. In general, fiscal implications are not anticipated for entities seeking production area authorizations as a result of the administration or enforcement of the Chapter 55 rule revisions, unless their applications meet the requirements for a contested case hearing.

The primary purpose of the proposed rule is to implement SB 1604. The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department to the commission. Technical requirements for these programs have been transferred from the Departments' rules into new subchapters of the commission's radioactive substantive rules in Chapter 336.

The proposed amendment to Chapter 55 exempts in situ uranium mining production area authorizations submitted after September 1, 2007, from contested case hearing requirements, unless their applications meet certain requirements. There is opportunity for a contested case hearing for an application that addresses the initial establishment of monitor wells excluding baseline wells unless the executive director uses the recommendations of an independent third-party expert. In addition, there is opportunity for a contested case hearing on an application for a production area authorization if the application addresses an amendment of a restoration table value or for an amendment to the type and amount of financial assurance required for aquifer restoration.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

In general, no fiscal implications are anticipated for businesses or individuals as a result of the proposed rule changes. The proposed rule implements sections of SB 1604 and exempts entities seeking production area authorizations after September 1, 2007, from contested case hearing requirements, unless their applications meet certain requirements. If the applicants meet the requirements for a contested case hearing, and a hearing is requested, there will be additional costs for the applicant though these costs will depend upon the particular circumstances for each application.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rule. The changes proposed are part of a larger proposal to revise the commission's radiation control rules. The proposed amendment to Chapter 55 implements requirements in SB 1604 and provide exceptions as to when there is opportunity for a contested case hearing on an application submitted after September 1, 2007, for a production area authorization. No small or micro-businesses are anticipated to be affected by the proposed amendment.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five

years that the proposed rule is in effect and the proposed rule is required in order to implement SB 1604 and HB 3838.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in SB 1604, establishing requirements for production area authorizations for in situ recovery of uranium. The proposed amendment to Chapter 55 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment affects only procedural requirements for participating in a contested case hearing on a production area authorization application. The proposed rulemaking action also amends requirements for in situ recovery of uranium in Chapter 331, amends technical requirements and for radioactive materials licenses and establishes fees for applications and waste disposal in Chapter 336, amends license application requirements and permit term limits in Chapter 305, amends financial assurance requirements in Chapter 37, and amends public notice requirements in Chapter 39.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes for injection well permits, production area authorizations, and exempt aquifers do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards for production area authorizations. The proposed rulemaking is compatible with federal law.

The proposed rule does not exceed a requirement of state law. TWC, Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. SB 1604 amended the Injection Well Act to establish requirements for production area authorizations and for determining when production area authorization applications are subject to an opportunity for participation in a contested case hearing. The purpose of the rulemaking is to implement requirements consistent with TWC, Chapter 27, as amended by SB 1604.

The proposed rule is compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the United States Environmental Protection Agency, and the proposed rule is compatible with the state's delegation of the UIC program.

The proposed rule is adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for production area authorizations.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rulemaking and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the proposed rule would not constitute a taking of real property.

The purpose of the proposed rule is to implement legislative requirements in SB 1604, establishing requirements for production area authorizations for in situ recovery of uranium. The proposed rule would substantially advance this purpose by amending the requirements applicable to participation in contested case hearings on applications for production area authorizations.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed amendment is procedural, affecting the participation in contested case on applications for production area authorizations, and does not affect real property. The proposed rule implements provisions already effective in statute. Therefore, the proposed rule does not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, and the public interest counsel, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed

to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of a voluntary emission reduction permit or an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program); or

(C) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(a)(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; [~~and~~]

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law ; and[~~.~~]

(11) an application for a production area authorization that is submitted after September 1, 2007 unless the authorization seeks:

(A) an amendment to a restoration value in accordance with the requirements of §331.107(g) of this title (relating to Amendment of Restoration Table Values);

(B) the initial establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells, unless the executive director uses the recommendations of an independent third-party expert as provided in §331.108 of this title (relating to Independent Third-Party Experts); or

(C) an amendment to the type or amount of financial assurance required for aquifer restoration, or by Texas Water Code, §27.073, to assure that there are sufficient funds available to the state to utilize a third-party contractor for aquifer restoration or plugging of abandoned wells in the area. Adjustments solely associated with the annual inflation rate adjustment required under §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), or for adjustments due to a decrease in the cost estimate for plugging and abandonment of wells when plugging and abandonment has been approved by the executive director in accordance with §331.144 of this title (relating to Approval of Plugging and Abandonment) are not considered an amendment to the type or amount of financial assurance required for aquifer restoration or well plugging and abandonment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804555
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§117.140, 117.145, 117.340, 117.345, 117.2035, and 117.2045.

Sections 117.140, 117.145, 117.340, 117.345, 117.2035, and 117.2045 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On October 15, 2007, Viridis Energy Texas, L.P., submitted two petitions for rulemaking regarding provisions for output-based monitoring alternatives for stationary engines and stationary gas turbines at major and minor sources of nitrogen oxides (NO_x) in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. The commission approved the petitions for rulemaking on December 5, 2007, and issued an order on December 13, 2007, directing the executive director to examine the issues in the petitions and to initiate rulemaking.

At the April 16, 2008, commissioners' agenda, the commissioners agreed to remand the proposed rule change and directed staff to examine expanding the proposed rules to include the Beaumont-Port Arthur (BPA) ozone nonattainment area. Staff concluded that expanding the rules to include the BPA ozone nonattainment area would provide additional flexibility for owners and operators of applicable sources to monitor unit activity levels in the manner most appropriate for their facility.

The rules in Chapter 117 currently require stationary reciprocating internal combustion engines and stationary gas turbines located at major sources of NO_x in the BPA and HGB ozone nonattainment areas to each have a fuel flow meter installed. Stationary reciprocating internal combustion engines and stationary gas turbines located at minor sources of NO_x in the HGB ozone nonattainment area that are in the Mass Emission Cap and Trade Program are also required to have a fuel flow meter installed. The proposed rule change would allow the use of output-based monitoring as an alternative to the engine and turbine fuel flow meter requirements for the BPA and HGB ozone nonattainment areas. The suggested rule change is consistent with an option currently allowed under Chapter 117 for engines in the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area. During the recent DFW eight-hour ozone nonattainment area rulemaking under Chapter 117, a provision was added under §117.440(a)(2)(D), in response to comment, to allow the output-based alternative to fuel flow monitoring for stationary internal combustion engines and stationary gas turbines. Similar provisions were not provided for the BPA and HGB ozone nonattainment areas because no comments were accepted for the BPA and HGB ozone nonattainment areas at that time.

The proposed rulemaking would amend the major source rule in the BPA ozone nonattainment area in Chapter 117, Subchapter B, Division 1, and amend both the major and minor source rules for the HGB ozone nonattainment area in Chapter 117, Subchapter B, Division 3 and Subchapter D, Division 1. These proposed changes would be consistent with the output-based monitoring option currently allowed for stationary reciprocating internal combustion engines and stationary gas turbines at major sources in the DFW eight-hour ozone nonattainment area. The first proposed rule change would apply to major sources of NO_x in the BPA and HGB nonattainment areas. It would provide output-based monitoring as an additional alternative to the existing requirement to install fuel flow meters on stationary reciprocating internal combustion engines and stationary gas turbines. For consistency with the DFW eight-hour ozone nonattainment area requirements, a corresponding addition would be needed to prescribe recordkeeping requirements for sources using the output-based monitoring option. Owners or operators using output-based monitoring would be required to maintain records of daily average horsepower and hours of operation.

The second proposed rule change would apply to minor sources of NO_x in the HGB ozone nonattainment area. It would provide output-based monitoring as an additional alternative to the existing requirement to install fuel flow meters on stationary reciprocating internal combustion engines and stationary gas turbines. For consistency with the DFW eight-hour ozone nonattainment area requirements, a corresponding addition would be needed to prescribe recordkeeping requirements for sources using the output-based monitoring option. Owners or operators using output-based monitoring would be required to maintain records of daily average horsepower and hours of operation.

The commission is only accepting comments regarding the specific changes proposed by the petitioner and directed by the commissioners at the April 16, 2008, agenda. Comments received related to other portions of the sections proposed for amendment will not be considered and no changes will be made in response to such comments.

SECTION BY SECTION DISCUSSION

The proposed rulemaking would amend the major source rules in the BPA ozone nonattainment area in Chapter 117, Subchapter B, Division 1, §117.140 and §117.145, and both the major and minor source rules for the HGB ozone nonattainment area in Chapter 117, Subchapter B, Division 3, §117.340 and §117.345, and Chapter 117, Subchapter D, Division 1, §117.2035 and §117.2045. These proposed changes would be consistent with the output-based monitoring option currently allowed for stationary engines and gas turbines at major sources in the DFW eight-hour ozone nonattainment area.

SUBCHAPTER B, COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1, BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA MAJOR SOURCES

Section 117.140, Continuous Demonstration of Compliance

The commission proposes to amend §117.140(a)(2) to include a subparagraph (D). Section 117.140(a)(2) provides for alternatives to the totalizing fuel flow meter requirement in §117.140(a). The proposed subparagraph (D) would provide an additional output-based alternative for stationary reciprocating internal combustion engines and stationary gas turbines to the §117.140(a) requirement to install, calibrate, maintain, and operate totalizing fuel flow meters on each applicable unit listed under §117.140(a)(1). Applicable units in §117.140(a)(1)(B) and (C) include, respectively, stationary reciprocating internal combustion engines and stationary gas turbines.

The proposed amendment would include subparagraph (D) to state that stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures. This language is identical to existing rule

text for the output-based monitoring alternative for stationary engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area.

Section 117.145, Notification, Recordkeeping, and Reporting Requirements

The commission proposes to amend §117.145(f) to include a paragraph (10) for recordkeeping requirements consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision of proposed §117.140(a)(2)(D). Existing §117.145(f) consists of the recordkeeping requirements for units subject to Division 1. The subsection directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and make available by request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. Existing §117.145(f)(1) - (9) detail the types of data to be recorded depending on the specific compliance and monitoring methodologies specified in this division.

Proposed §117.145(f)(10) would specify the recordkeeping requirements of output-based monitoring data based on the existing recordkeeping rule text in §117.445(f)(3)(C) for output-based data collection in the DFW eight-hour ozone nonattainment area. Proposed §117.145(f)(10) states that an owner or operator electing to use the alternative monitoring system allowed under §117.140(a)(2)(D) shall record the daily average horsepower and total daily hours of operation. In addition, proposed paragraph (10) would clarify that records of annual fuel usage specified under §117.145(f)(1) are not required for units that are monitored according to proposed §117.140(a)(2)(D).

SUBCHAPTER B, COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 3, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

Section 117.340, Continuous Demonstration of Compliance

The commission proposes to amend §117.340(a)(2) to include a subparagraph (D). Section 117.340(a)(2) provides for alternatives to the totalizing fuel flow meter requirement in §117.340(a). The proposed subparagraph (D) would provide an additional output-based alternative for stationary reciprocating internal combustion engines and stationary gas turbines to the §117.340(a) requirement to install, calibrate, maintain, and operate totalizing fuel flow meters on each applicable unit listed under §117.340(a)(1). Applicable units in §117.340(a)(1)(A)(ii) and (iii) include, respectively, stationary reciprocating internal combustion engines and stationary gas turbines.

The proposed amendment would include §117.340(a)(2)(D) to state that stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures. This language is identical to existing rule text for the output-based monitoring alternative for stationary engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area.

Section 117.345, Notification, Recordkeeping, and Reporting Requirements

The commission proposes to amend §117.345(f) to include a paragraph (12) for recordkeeping requirements consistent with the horsepower and hours of operation data that would be collected by the output-based alternative monitoring provision of proposed §117.340(a)(2)(D). Existing §117.345(f) consists of the recordkeeping requirements for units subject to this division. The subsection directs owners or operators of subject units to maintain written or electronic records of specified data for a period of at least five years and made available by request by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. Existing §117.345(f)(1) - (11) detail the types of data to be recorded depending on the specific compliance and monitoring methodologies specified in this division and under 30 TAC Chapter 101, Subchapter H, Division 3, Mass Emissions Cap and Trade.

Proposed §117.345(f)(12) would specify the recordkeeping requirements of output-based monitoring data based on the existing recordkeeping rule text in §117.445(f)(3)(C) for output-based data collection in the DFW eight-hour ozone nonattainment area. Proposed §117.345(f)(12) states that an owner or operator electing to use the alternative monitoring system allowed under §117.340(a)(2)(D) shall record the daily average horsepower and total daily hours of operation. In addition, proposed paragraph (12) would clarify that records of annual fuel usage specified under §117.345(f)(1) are not required for units that are monitored according to proposed new §117.340(a)(2)(D).

SUBCHAPTER D, COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

Section 117.2035, Monitoring and Testing Requirements

The commission proposes to amend §117.2035(a)(2) by adding a subparagraph (G), which provides an output-based monitoring alternative to installing, calibrating, maintaining, and operating totalizing fuel flow meters for stationary reciprocating internal combustion engines and stationary gas turbines at minor sources in the HGB ozone nonattainment area. Existing §117.2035(a)(2)(A) - (F) specifies alternatives to the fuel flow meter requirements of this section. This rulemaking proposal would create a subparagraph (G) to add an output-based monitoring alternative to the existing alternatives to the fuel flow monitoring requirement.

Proposed §117.2035(a)(2)(G) would allow owners or operators to use a continuous monitoring system that continuously monitors horsepower and hours of operation as an alternative to installing fuel meters. The monitoring system must be installed, calibrated, maintained, and operated according to the manufacturers' recommended procedures. This rule language is consistent with the existing output-based monitoring alternative for major sources in the DFW eight-hour ozone nonattainment area and the proposed major source output-based monitoring alternative included in this rulemaking.

Section 117.2045, Recordkeeping and Reporting Requirements

The commission proposes to amend §117.2045(a) to include a paragraph (7) requiring records of daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the output-based monitoring option un-

der proposed §117.2035(a)(2)(G). The proposed paragraph (7) would provide consistent recordkeeping and reporting requirements for data collected using the output-based alternative monitoring provisions for stationary engines and stationary gas turbines.

Proposed §117.2045(a)(7) would require an owner or operator electing to use the alternative monitoring system allowed under proposed §117.2035(a)(2)(G) to maintain records of the daily average horsepower and total daily hours of operation for each stationary reciprocating internal combustion engine or stationary gas turbine. Proposed paragraph (7) would clarify that records of annual fuel usage specified under §117.2045(a) are not required for units that are monitored according to proposed §117.2035(a)(2)(G). These records must be maintained for at least five years and must be made available upon request to the authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will utilize existing resources to implement the proposed rules. The proposed rules provide an alternative to regulated entities in the HGB and BPA ozone nonattainment areas to monitor sources of NO_x. Overall, local governments and other regulated entities are expected to see a cost savings as a result of the flexibility in monitoring methods that the proposed rules offer.

The proposed rules would amend both the major and minor source rules in Chapter 117 for the HGB and BPA ozone nonattainment areas to allow an additional method of monitoring NO_x emissions from stationary reciprocating internal combustion engines and stationary gas turbines. Current Chapter 117 rules for the HGB and BPA ozone nonattainment areas require the installation of a fuel flow meter on this type of machinery as a method of monitoring NO_x emissions. The proposed rulemaking will allow the use of output-based monitoring as an alternative to the installation of the meter and afford major sources of NO_x emissions in the HGB and BPA ozone nonattainment areas and minor source of NO_x emissions in the HGB ozone nonattainment area with the same flexibility that is available to major sources in the DFW eight-hour ozone nonattainment area. There will be recordkeeping requirements associated with output-based monitoring, but regulated entities are not expected to choose this alternate monitoring method unless it results in reduced costs to them.

The proposed rules are expected to reduce monitoring costs for some local governments in the HGB and BPA ozone nonattainment areas that own or operate stationary reciprocating internal combustion engines and stationary gas turbines. Since the primary purpose of the rules is to provide additional monitoring flexibility while continuing to protect public health and safety, local governments are expected to choose the monitoring method resulting in the lowest cost to them. Staff cannot estimate the number of local governments that will choose this alternate monitoring method, and overall cost savings to local governments in the HGB and BPA ozone nonattainment areas resulting from the proposed rules cannot be quantified.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of the environment and public health and safety in the HGB and BPA ozone nonattainment areas while providing additional monitoring alternatives for NO_x emissions to owner or operators of stationary reciprocating internal combustion engines and stationary gas turbines.

The proposed rules are expected to reduce monitoring costs overall for some regulated entities owning or operating stationary internal combustion engines and stationary gas turbines in the HGB and BPA ozone nonattainment areas since it affords them the opportunity to choose a monitoring method that might be less expensive compared to the monitoring method prescribed under current rules. Businesses are expected to choose this method only if associated recordkeeping requirements result in lower operating costs than installing a fuel flow meter. Staff does not have sufficient data to know how many owners of this equipment will choose the proposed alternative, and total costs savings cannot be estimated.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules. The proposed rules provide the same flexibility to small or micro-businesses in the HGB and BPA ozone non-attainment areas regarding the monitoring of NO_x emissions from stationary reciprocating internal combustion engines and stationary gas turbines that is afforded to other regulated entities. Small or micro-businesses are expected to choose the monitoring method that is the least expensive for their business operation, and small or micro-businesses are expected to experience the same cost savings as those experienced by large businesses. Data is not available to determine the monitoring method that will be chosen by these businesses, and therefore, total cost savings for small or micro-businesses cannot be quantified.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysisis not required because the proposed rules do not adversely affect a small or micro-businessin a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a major environmental rule. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the proposed rules is to provide flexibility by allowing the use of output-based monitoring as an alternative to the engine and turbine fuel flow meter requirements for the HGB and BPA ozone nonattainment areas. The proposed rules are also intended to add consistency to the rules; this option is currently allowed under Chapter 117 for stationary reciprocating internal combustion engines and stationary gas turbines in the DFW eight-hour ozone nonattainment area. Therefore, the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure.

The proposed rules will not affect in a material way the economy, a sector of the economy, productivity, jobs, the environment or the public health and safety of the state or a sector of the state. Under the proposed rules, the owners and operators would monitor the engine or turbine's horsepower output as opposed to the fuel flow input for emissions monitoring requirements. Specific costs for the output-based alternative monitoring option are not known. However, the alternative is provided as an option to an existing requirement; it is expected that owners or operators will only use the output-based monitoring if it is more cost effective than the current requirement. The output-based monitoring is at least as accurate as the input-based fuel flow monitoring currently required. Therefore, the proposed rules will not have an adverse affect on the economy, the environment, or public health and safety.

Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action, which is designed to add flexibility and consistency to the rules, does not exceed an express requirement under state or federal law. There is no contract or delegation agreement that covers the topic that is the subject of this action. Furthermore, the rulemaking is not adopted solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code, Chapter 382 and the Texas Water Code, as cited to in the STATUTORY AUTHORITY Section.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has evaluated the proposed rulemaking and made a preliminary assessment determining that the Texas Government Code, §2007, Governmental Action Affecting Private Property Rights, is not applicable. Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or it means a governmental action that affects an owner's private real property that is the subject of the governmental action in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25% in the market value of the affected private real property.

The proposed rule changes would allow for an alternative NO_x emissions monitoring option for owners and operators of stationary reciprocating internal combustion engines and stationary gas turbines in the BPA and HGB ozone nonattainment areas. Promulgation and enforcement of these proposed rules will constitute neither a statutory nor constitutional taking of private real property. The proposed rules do not restrict or limit a landowner's rights to the property or reduce the market value of the property by 25%. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed amendments are adopted by the commission, owners or operators subject to the federal operating permit program that elect to comply with the optional output-based monitoring may need to revise their operating permit to include the new requirement.

ANNOUNCEMENT OF HEARINGS

Public hearings for the proposal rulemaking and SIP revision have been scheduled in Houston on September 30, 2008, at 7:00 p.m., at the Houston-Galveston Area Council, Conference Room B, 3555 Timmons Lane and in Beaumont on October 1, 2008, at 1:00 p.m. at South East Texas Regional Planning Commission, 2210 Eastex Freeway. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearings to assure that enough time is allowed for every interested person to speak. There will be no discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should

contact Joyce Spencer, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-008-117-EN. Comments must be received by October 6, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1. BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.140, §117.145

STATUTORY AUTHORITY

The amendments are proposed under the authority of the following: Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The amendments are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.140. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ± 5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) Totalizing fuel flow meters are required for the following units that are subject to §117.105 or §117.110 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); and Emission Specifications for Attainment Demonstration) and for stationary gas turbines that are exempt under §117.103(b)(6) of this title (relating to Exemptions):

(A) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):

(i) boilers;

(ii) process heaters; and

(iii) gas turbine supplemental-fired waste heat recovery units;

(B) stationary, reciprocating internal combustion engines not exempt by §117.103(a)(6), (a)(8), (b)(8), or (b)(9) of this title; and

(C) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (e) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (e) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(D) Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the

following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (f) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.103(b)(3) - (5) and (7) - (9) of this title;

(B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (e) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (e) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (e) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) boilers and process heaters that are vented through a common stack and the total rated heat input from the units combined is greater than or equal to 250 MMBtu/hr and the annual heat input combined is greater than $2.2(10^{11})$ Btu/yr;

(D) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(E) units that use a chemical reagent for reduction of NO_x; and

(F) units that the owner or operator elects to comply with the NO_x emission specifications of §117.105 or §117.110(a) of this title using a pounds per million British thermal unit (lb/MMBtu) limit on a 30-day rolling average.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.105 or §117.110(a) of this title, units listed §117.103(b)(3) - (5) and (7) - (9) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1040(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) if the methods specified in subparagraphs (A) - (C) of this paragraph are not used, the owner or operator shall use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.135(f) of this title (relating to Initial Demonstration of Compliance).

(d) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(e) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(g) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(h) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.105 of this title or §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (d) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system must be accurate to within ± 5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.105 or §117.115 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.103(a)(6)(D), (b)(2), or (b)(8) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

(j) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.105(b)(6) or §117.115(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.135 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.105 or §117.110(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission specifications.

(l) Enforcement of NO_x RACT limits. If compliance with §117.105 of this title is selected, no unit subject to §117.105 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.105 of this title. If compliance with §117.115 of this title is selected, no unit subject to §117.115 of this title may be operated at an emission rate higher than that approved by the executive director under §117.152(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(m) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.103(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

§117.145. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.135 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.140 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.135 of this title and any CEMS or PEMS RATA conducted under §117.140 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system under §117.140 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.140(h)(2) of this title, excess emissions are computed as each one-hour period that the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission specifications in §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)); and

(B) for units complying with §117.123 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to the emission specifications in §§117.105, 117.110, or 117.115 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative Plant-Wide Emission Specifications) shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions based on the quarterly emission checks of §117.130(d)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.140(g) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.140(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.140 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.130(d)(7) of this title; and

(ii) §117.140(g) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for each stationary gas turbine monitored by steam-to-fuel or water-to-fuel ratio in accordance with §117.140(h) of this title, records of hourly:

(A) pounds of steam or water injected;

(B) pounds of fuel consumed; and

(C) the steam-to-fuel or water-to-fuel ratio;

(5) for hydrogen (H_2) fuel monitoring in accordance with §117.140(j) of this title, records of the volume percent H_2 every three hours;

(6) for units claimed exempt from emission specifications using the exemption of §117.103(a)(6)(D) or (b)(2) of this title (relating to Exemptions), either records of monthly:

(A) fuel usage, for exemptions based on heat input; or

(B) hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.103(a)(6)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(7) records of carbon monoxide measurements specified in §117.140(d) of this title;

(8) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of

CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; [~~and~~]

(9) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.135 of this title; and[~~.~~]

(10) for each stationary reciprocating internal combustion engine and stationary gas turbine for which the owner or operator elects to use the alternative monitoring system allowed under §117.140(a)(2)(D) of this title, records of the daily average horsepower and total daily hours of operation. Units that are monitored according to §117.140(a)(2)(D) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804581
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-0014

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DIVISION 3. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.340, §117.345

STATUTORY AUTHORITY

The amendments are proposed under the authority of the following: Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The amendments are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.340. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ± 5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following:

(A) for units that are subject to §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), for stationary gas turbines that are exempt under §117.303(b)(7) of this title (relating to Exemptions):

(i) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):

(I) boilers;

(II) process heaters;

(III) boilers and industrial furnaces that were regulated as existing facilities by 40 Code of Federal Regulations (CFR) Part 266, Subpart H, as was in effect on June 9, 1993; and

(IV) gas turbine supplemental-fired waste heat recovery units;

(ii) stationary reciprocating internal combustion engines not exempt by §117.303(a)(6), (a)(8), (b)(9), or (b)(10) of this title;

(iii) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(iv) fluid catalytic cracking unit boilers using supplemental fuel; and

(B) for units subject to §117.310 of this title (relating to Emission Specifications for Attainment Demonstration):

(i) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.345(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

(ii) process heaters;

(iii) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(iv) duct burners used in turbine exhaust ducts;

(v) stationary, reciprocating internal combustion engines;

(vi) stationary gas turbines;

(vii) fluid catalytic cracking unit boilers and furnaces using supplemental fuel;

(viii) lime kilns;

(ix) lightweight aggregate kilns;

(x) heat treating furnaces;

(xi) reheat furnaces;

(xii) magnesium chloride fluidized bed dryers; and

(xiii) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection.)

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(D) Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (g) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.303(b)(3) - (5) and (8) - (10) of this title;

(B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (g) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(D) units that use a chemical reagent for reduction of NO_x;

(E) units that the owner or operator elects to comply with the NO_x emission specifications of §117.305 of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;

(F) lime kilns and lightweight aggregate kilns;

(G) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.310(a) of this title; and

(H) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents). In addition, the owner or operator shall monitor the stack exhaust flow rate with a flow meter using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.305 of this title, units listed §117.303(b)(3) - (5) and (8) - (10) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.335(f) of this title (relating to Initial Demonstration of Compliance); or

(E) use the following procedures:

(i) for NO_x monitor downtime periods less than 24 consecutive hours, use the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 24 operational hours of the unit;

(ii) for NO_x monitor downtime periods equal to or greater than 24 consecutive hours, use the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 720 operational hours of the unit; and

(iii) if the fuel flow or stack exhaust flow monitor required by subsection (a) of this section is off-line simultaneous with the NO_x monitor downtime, the owner or operator shall use the maximum block one-hour NO_x pound per hour emission rate for the substitute data under clause (i) or (ii) of this subparagraph in lieu of the lb/MMBtu emission rate.

(d) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specifications of §117.310(c)(2) of this title shall comply with the ammonia monitoring requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(e) CO monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The CEMS must meet the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(2) For units subject to §117.310 of this title:

(A) all bypass stacks must be monitored, in order to quantify emissions directed through the bypass stack:

(i) if the CEMS is located upstream of the bypass stack, then:

(I) no effluent streams from other potential sources of NO_x emissions may be introduced between the CEMS and the bypass stack; and

(II) the owner or operator shall install, operate, and maintain a continuous monitoring system to automatically record the date, time, and duration of each event when the bypass stack is open; and

(ii) process knowledge and engineering calculations may be used to determine volumetric flow rate for purposes of calculating mass emissions for each event when the bypass stack is open, provided that:

(I) the maximum potential calculated flow rate is used for emission calculations; and

(II) the owner or operator maintains, and makes available upon request by the executive director, records of all process information and calculations used for this determination; and

(B) exhaust streams of units that vent to a common stack do not need to be analyzed separately.

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(h) Engine monitoring. The owner or operator of any stationary gas engine subject to §117.305 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines). The owner or operator of any stationary internal combustion engine subject to §117.310 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(a) and (b) of this title.

(i) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.305 or §117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Alternative Plant-Wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (e) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system must be accurate to within ± 5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data must constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.305 or §117.315 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(j) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.303(a)(6)(D), (a)(10), (a)(11), (b)(2) or (b)(9) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

(k) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.305(b)(6) or §117.315(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to

the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(l) Data used for compliance.

(1) After the initial demonstration of compliance required by §117.335 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.305 of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(2) For units subject to §117.310(a) of this title, the methods required in this section must be used in conjunction with the requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) to determine compliance. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(m) Enforcement of NO_x RACT limits. If compliance with §117.305 of this title is selected, no unit subject to §117.305 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.305 of this title. If compliance with §117.315 of this title is selected, no unit subject to §117.315 of this title may be operated at an emission rate higher than that approved by the executive director under §117.352(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(n) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.303(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(o) Testing and operating requirements. The owner or operator of units that are subject to §117.310(a) of this title shall comply with the following.

(1) The owner or operator of units that are subject to §117.310(a) of this title shall test the units as specified in §117.335 of this title in accordance with the schedule specified in §117.9020(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(p) Emission allowances. The owner or operator of units that are subject to §117.310(a) of this title shall comply with the following.

(1) The NO_x testing and monitoring data of subsections (a), (c), (f), (g), and (o) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor for calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program.

(2) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in subsection (o)(1) of this section is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in subsection (o)(1) of this section may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting must be used to establish a new emission factor to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(D) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(3) The emission factor in paragraph (1) or (2) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

§117.345. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.335 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.340 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.335 of this title and any CEMS or PEMS RATA conducted under §117.340 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system under §117.340 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) and the monitoring system performance. For sources in the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), that are no longer subject to §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), the report is only a monitoring system report as specified in paragraph (3) of this subsection. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.340(i)(2) of this title, excess emissions are computed as each one-hour period that the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission specifications in §117.305 of this title; and

(B) for units complying with §117.323 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to §§117.305, 117.310, or 117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative Plant-Wide Emission Specifications) shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions [~~,~~]based on the quarterly emission checks of §117.330(d)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.340(h) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.340(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.340 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average;

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pound per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day; or

(C) daily emissions and fuel usage (or stack exhaust flow) for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title. Emissions must be recorded in units of:

(i) lb/MMBtu heat input or in the units of the applicable emission specification in §117.310(a) of this title; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.330(d)(7) of this title; and

(ii) §117.340(h) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for each stationary gas turbine monitored by steam-to-fuel or water-to-fuel ratio in accordance with §117.340(i) of this title, records of hourly:

(A) pounds of steam or water injected;

(B) pounds of fuel consumed; and

(C) the steam-to-fuel or water-to-fuel ratio;

(5) for hydrogen (H_2) fuel monitoring in accordance with §117.340(k) of this title, records of the volume percent H_2 every three hours;

(6) for units claimed exempt from emission specifications using the exemption of §117.303(a)(6)(D), (a)(10), (a)(11), or (b)(2) of this title (relating to Exemptions), either records of monthly:

(A) fuel usage, for exemptions based on heat input; or

(B) hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.303(a)(6)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(7) records of carbon monoxide measurements specified in §117.340(e) of this title;

(8) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems;

(9) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.335 of this title;

(10) for each stationary diesel or dual-fuel engine, records of each time the engine is operated for testing and maintenance, including:

(A) date(s) of operation;

(B) start and end times of operation;

(C) identification of the engine; and

(D) total hours of operation for each month and for the most recent 12 consecutive months; [~~and~~]

(11) for units subject to the ammonia monitoring requirements of §117.340(d) of this title, records that are sufficient to demonstrate compliance with the requirements of §117.8130 of this title (relating to Ammonia Monitoring). For the sorbent or stain tube option, these records must include the ammonia injection rate and NO_x stack emissions measured during each sorbent or stain tube test ; and[~~.~~]

(12) for each stationary reciprocating internal combustion engine and stationary gas turbine for which the owner or operator elects to use the alternative monitoring system allowed under §117.340(a)(2)(D) of this title, records of the daily average horsepower and total daily hours of operation. Units that are monitored according to §117.340(a)(2)(D) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0014

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SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 1. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §117.2035, §117.2045

STATUTORY AUTHORITY

The amendments are proposed under the authority of the following: Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The amendments are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records

of emissions measurements; THSC, §382.021, concerning Sampling Methods and Procedures, authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), concerning Permitting Authority of Commission; Rules, authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.2035. Monitoring and Testing Requirements.

(a) Totalizing fuel flow meters.

(1) The owner or operator of each unit subject to §117.2010 of this title (relating to Emission Specifications) and subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), or of each unit claimed exempt under §117.2003(b) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ± 5% accuracy required as soon as practicable, but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(2) The following are alternatives to the fuel flow monitoring requirements of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records.

(D) Units of the same category of equipment subject to Chapter 101, Subchapter H, Division 3 of this title may share a single totalizing fuel flow meter provided:

(i) the owner or operator performs a stack test in accordance with subsection (e) of this section for each unit sharing the totalizing fuel flow meter; and

(ii) the testing results from the unit with the highest emission rate (in pounds per million British thermal units or grams per horsepower-hour) are used for reporting purposes in §101.359 of this title (relating to Reporting) for all units sharing the totalizing fuel flow meter.

(E) The owner or operator of a unit or units claimed exempt under §117.2003(b) of this title, located at an independent school district may demonstrate compliance with the exemption by the following:

(i) in addition to the records required by §117.2045(a)(1) of this title (relating to Recordkeeping and Reporting Requirements), maintain the following monthly records in either electronic or written format. These records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction;

(I) total fuel usage for the entire site;

(II) the estimated hours of operation for each unit;

(III) the estimated average operating rate (e.g., a percentage of maximum rated capacity) for each unit; and

(IV) the estimated fuel usage for each unit; and

(ii) within 60 days of written request by the executive director, submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit.

(F) The owner or operator of units claimed exempt under §117.2003(b) of this title may share a single totalizing fuel flow meter to demonstrate compliance with the exemption, provided that:

(i) all affected units at the site qualify for the exemption under §117.2003(b) of this title; and

(ii) the total fuel usage for all units at the site is less than:

(I) the annual fuel usage limitation in §117.2003(b)(1) of this title; or

(II) the annual fuel usage limitation in §117.2003(b)(2) of this title when all affected units at the site are equal to or greater than 5.0 million British thermal units per hour.

(G) Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturer's procedures.

(b) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(c) NO_x monitors. If the owner or operator installs a CEMS or predictive emissions monitoring system (PEMS), it must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).

(d) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9200 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).

(e) Testing requirements. The owner or operator of any unit subject to §117.2010 of this title shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2010(i)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 CFR Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with §117.2010 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting must establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(8) Testing must be performed in accordance with the schedule specified in §117.9200 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(f) Emission allowances.

(1) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, the NO_x testing and monitoring data of subsections (a) - (e) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(2) The emission factor in subsection (e)(7) of this section or paragraph (1) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(g) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2003(a)(2)(E), (H), or (I) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

§117.2045. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2010 of this title (relating to Emission Specifications) or claimed exempt under §117.2003(b) of this title (relating to Exemptions) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) records of annual fuel usage;

(2) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2035(c) of this title (relating to Monitoring and Testing Requirements), monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to §117.2010 of this title, records of:

(A) emissions measurements required by §117.2030(b)(5) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) records of carbon monoxide measurements specified in §117.2030(b)(5) of this title;

(5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; [~~and~~]

(6) records of the results of performance testing, including the testing conducted in accordance with §117.2035(e) of this title; and [~~.~~]

(7) records of daily average horsepower and total daily hours of operation for each stationary reciprocating internal combustion engine or stationary gas turbine that the owner or operator elects to use the alternative monitoring system allowed under §117.2035(a)(2)(G) of this title. Units that are monitored according

to §117.2035(a)(2)(G) of this title are not required to keep records of annual fuel usage as required by paragraph (1) of this subsection.

(b) Records for exempt engines. Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2003(a)(2)(E), (H), or (I) of this title or §117.2030(b)(5) of this title. In addition, for each engine claimed exempt under §117.2003(a)(2)(E) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804583
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-0014

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§305.49, 305.62, and 305.127.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), Texas Water Code (TWC), Chapter 27 (also known as the Injection Well Act), and House Bill (HB) 3838, 80th Legislature, 2007. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RCC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The proposed rules to Chapter 305 address amendment application requirements for radioactive materials licenses, establish term limits for injection well area permits authorizing in situ recovery of uranium, and address production area authorization application requirements.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 55, 331, and 336.

SECTION BY SECTION DISCUSSION

The commission proposes an amendment to §305.49(a)(7) to specify that for Class I injection wells only, a letter is required from the RRC stating that the drilling of a disposal well and the injection of waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation. This letter is required under the TWC, §27.015(a) for disposal wells. Class III injection wells, however, are for the recovery of minerals, and are not disposal wells. The proposed rule change is necessary to avoid application of this requirement to Class III wells. Additionally, Class III wells typically are completed at depths of less than 1,000 feet, whereas most oil and gas production in Texas currently are at greater depths.

The commission proposes an amendment to §305.49(b) to include a new paragraph (6), under which an application for a production area authorization must include a cost estimate for aquifer restoration and well plugging and abandonment. Although financial assurance for aquifer restoration currently is addressed in the Radioactive Materials License for source material recovery, cost estimates for aquifer restoration are reviewed by staff of the TCEQ UIC program. By requiring submission of aquifer restoration cost estimates in an application for a production area, TCEQ UIC staff will be able to complete this review in a timely manner as part of the production area authorization application. Existing paragraph (6) has been renumbered to paragraph (7).

The commission proposes an amendment to §305.62(c) to remove the list of major amendments for licenses issued under Chapter 336, Subchapter H, Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste. Major amendments for licenses issued under Chapter 336 will be in proposed §305.62(i). Additionally, the commission proposes to amend §305.62(c)(3)(G) to define the acronym CFR.

The commission proposes §305.62(i) to establish what amendments to an existing license constitute a major amendment, minor amendment, or administrative amendment. Proposed §305.62(i)(1) lists the types of license changes that would be a major amendment. For evaluating other license changes that are not specified, §305.62(i)(1)(K) provides that a major amendment is one in which a change will have a significant effect on the human environment and which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required. Major amendment applications are subject to public notice requirements of Chapter 39 and are subject to an opportunity to request a contested

case hearing. Proposed §305.62(i)(2) lists the type of license changes that would be a minor amendment. If a license change is not specified, the executive director may determine that a proposed changes is a minor amendment under §305.62(i)(2)(E). A minor amendment is one in which a change will not have significant effect on the human environment, but does require a technical review by the executive director. A minor amendment is subject to public notice requirements of Chapter 39, but is not subject to an opportunity to request a contested case hearing. An administrative amendment is one in which is clerical in nature, or after completion of a review, the executive director determines is not a major or minor amendment. Proposed §305.62(i)(3) lists examples of types of license changes that would be an administrative amendment. An administrative amendment is not subject to public notice requirements or opportunity to request a contested case hearing. Existing subsections (i) and (j) will be re-designated as subsections (j) and (k), respectively.

The commission proposes an amendment to §305.127(1)(A)(ii) to place a 10-year term on permits for Class III wells. This proposed change is necessary to implement TWC, §27.0513(b), which was added to the TWC through SB 1604.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the Texas Department of State Health Services (DSHS or Department) due to administration or enforcement of the proposed changes to the Chapter 305 rules. The proposed changes to Chapter 305 are part of a larger proposal to implement the second phase of the transfer of certain regulatory responsibilities for radioactive waste from DSHS to the TCEQ as required by SB 1604, 80th Legislature, 2007. The second phase rulemaking also incorporates changes required by HB 3838, 80th Legislature, 2007, relating to in situ uranium mining. The 80th Legislature provided additional staff and funding to the TCEQ to implement the transfer of the regulatory responsibilities. No significant fiscal implications are anticipated for regulated entities as a result of the administration or enforcement of the Chapter 305 rule revisions.

The primary purpose of the proposed rules is to implement SB 1604. The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department to the commission. Technical requirements for these programs have been transferred from the Department's rules into new subchapters of the commission's radioactive substantive rules in Chapter 336.

The proposed amendments to Chapter 305 include changes that establish what constitutes a major amendment, minor amendment, or administrative amendment to an existing license. The proposed amendments would also require that applications for a production area authorization include a cost estimate for aquifer restoration. The proposed rules would place a 10-year term on permits for Class III wells. There was no previous term limit for the permit. According to program staff, none of the proposed changes are anticipated to result in significant changes in current policies or procedures and are therefore not expected to result in significant fiscal implications.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

In general, no significant fiscal implications are anticipated for businesses or individuals as a result of the proposed rule changes. The proposed changes that establish a major amendment, minor amendment, or administrative amendment to an existing license and the proposed changes that require applications for a production area authorization to include a cost estimate for aquifer restoration are not anticipated to result in significant changes in current policies or procedures and are therefore not expected to result in significant fiscal implications. The proposed rules would place a 10-year term on permits for Class III wells. The new 10-year term was set by SB 1604. There was no previous term limit for the permit. Permit application fees are set at $100 with an additional $50 for notice requirements.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. The changes proposed are part of a larger proposal to revise the commission's radiation control rules. The proposed amendments include changes that establish what constitutes a major amendment, minor amendment, or administrative amendment to an existing license, require that applications for a production area authorization include a cost estimate for aquifer restoration, and place a 10-year term on permits for Class III wells. No small or micro-businesses are anticipated to be affected by the proposed amendments.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required in order to implement SB 1604 and HB 3838.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commer-

cial radioactive substances storage and processing from the Department to the commission and amends the UIC program requirements for in situ recovery of uranium. The proposed rules to Chapter 305 address amendment application requirements for radioactive materials licenses, establish term limits for injection well area permits authorizing in situ recovery of uranium, and address production area authorization application requirements. The proposed amendments to Chapter 305 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments apply only to procedural requirements for submitting amendment applications for radioactive material licenses, application requirements for production area authorizations, and establish term limits to area permits required by statute. The proposed rulemaking action also amends technical requirements for the radioactive material licensing programs and establishes fees for applications and waste disposal in Chapter 336, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in Chapter 37, amends public notice requirements in Chapter 39, and amends public participation requirements in Chapter 55.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes to term limits for injection well permits and application requirements production area authorizations do not exceed a standard of federal law or requirement of a delegation agreement. The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements for the licensing and disposal of radioactive substances, source material recovery, commercial radioactive substances storage and processing, and low-level radioactive waste disposal. TWC, Chapter 27, establishes requirements for the commission's UIC program. The purpose of the rulemaking is to implement application requirements consistent with THSC, Chapter 401 and TWC, Chapter 27, as amended by SB 1604.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." The commission's UIC program is authorized by the United States Environmental Protection Agency, and the permit term limits and production area authorization requirements are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. TWC, §27.019 requires the commission to adopt rules reasonably required to implement the Injection Well Act.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to provide clarifying changes to the amendment application requirements for radioactive material licenses, to provide term limits for injection well permits authorizing in situ recovery of uranium, and to amend application requirements for production area authorizations. The proposed rules to Chapter 305 would substantially advance this purpose by amending the application requirements and establish injection well permit term limits required by statute.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules amend application requirements for radioactive materials licenses and production area authorizations, and establish term limits for injection well permits, and do not affect real property. The proposed rules apply only to those who submit a subject application or have an existing injection well permit subject to the term limits established in SB 1604. The technical requirements for the applications subject to Chapter 305 are found in other chapters. Therefore, the proposed rules do not

affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.49

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following must be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title, the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements in Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Closure Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) <u>for Class I wells,</u> a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation by a licensed professional geoscientist or a licensed professional engineer of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations; [~~and~~]

(6) cost estimate for aquifer restoration and well plugging and abandonment; and

(7) [~~(6)~~] other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.62

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§305.62. Amendments.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste (MSW) permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments, other than amendments for radioactive material licenses in subsection (i) of this section.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. [~~In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:~~]

~~[(A) authorizes a change in the type or concentration limits of wastes to be received;]~~

~~[(B) authorizes receipt of wastes from other states not authorized in the existing license;]~~

~~[(C) authorizes a change in the operator of the facility;]~~

~~[(D) authorizes closure and the final closure plan for the disposal site;]~~

~~[(E) transfers the license to the custodial agency; or]~~

~~[(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.]~~

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 Code of Federal Regulations [~~CFR~~] §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as

an application for a renewal of the permit if so requested by the applicant.

(i) Types of amendments for radioactive material licenses authorized in Chapter 336 of this title (relating to Radioactive Substance Rules).

(1) Major amendments. A major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the licensee, owner or operator of the licensed facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency;

(F) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(G) authorizes a change of the method specified in the license for disposal of by-product material as defined in the Texas Radiation Control Act, Texas Health and Safety Code, §401.003(3)(B);

(H) grants an exemption from any provision of Chapter 336 of this title;

(I) authorizes a new technology or process that requires an engineering review;

(J) authorizes a reduction in financial assurance amounts; or

(K) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required;

(2) Minor amendments. An application for a minor amendment is subject to public notice requirements of Chapter 39 of this title (relating to Public Notice), but is not subject to an opportunity to request a contested case hearing. A minor amendment is one which:

(A) authorizes a change in health and safety procedures that does not have a potential significant impact on public health and safety, worker safety, or environmental health;

(B) authorizes facility modifications that enhance public health and safety or protection of the environment;

(C) authorizes the addition of previously reviewed production or processing equipment, and where an environmental assessment has been completed;

(D) grants modifications to enhance environmental monitoring programs; or

(E) any amendment, after completion of a review, the executive director determines is a minor amendment.

(3) Administrative amendments. An application for an administrative amendment is not subject to public notice requirements and is not subject to an opportunity to request a contested case hearing. An administrative amendment is one which:

(A) corrects a clerical or typographical error;

(B) changes the mailing address or other contact information of the licensee;

(C) changes the Radiation Safety Officer, if the person meets the criteria in Chapter 336 of this title;

(D) changes the name of an incorporated licensee that amends its articles of incorporation only to reflect a name change, if updated information is provided by the licensee, provided that the Secretary of State can verify that a change in name alone has occurred;

(E) is a federally-mandated change to a license;

(F) corrects citations in license from rules/statutes;

(G) is necessary to address emergencies; or

(H) any amendment, after completion of a review, the executive director determines is an administrative amendment.

(j) [~~(i)~~] This subsection applies only to major amendments to [~~municipal solid waste (~~] MSW [~~)~~] permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(k) [~~(j)~~] This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events, or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for municipal solid waste facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §305.127

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§305.127. Conditions to be Determined for Individual Permits.

Conditions to be determined on a case-by-case basis according to the criteria specified in this section, and when applicable, incorporated into the permit expressly or by reference, are listed in the following paragraphs.

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Initial permits and reissuance of permits [~~Permits~~] for Class III wells shall be for a fixed term of ten years [~~or projects may be for the life of the well or project, and shall be reviewed at least once every five years~~].

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows.

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) A license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be issued for an initial term of 15 years from the date of issuance. After the initial 15 years, the commission may renew the license for one or more terms of ten years. The authority to dispose of waste expires on the date stated in the license except as provided in §336.718(a) of this title (relating to Application for Renewal or Closure).

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply.

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For underground injection control permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) one schedule shall lead to timely compliance with applicable requirements;

(-c-) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements; and

(-d-) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, to Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting) for waste discharge standards, to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards, and to Chapter 222 of this title (relating to Subsurface Area Drip Dispersal Systems) for subsurface area drip dispersal systems standards.

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title, Chapter 309 of this title for waste discharge standards, Chapter 329 of this title for drilled or mined shaft standards, and Chapter 222 of this title for subsurface area drip dispersal systems standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§331.2, 331.7, 331.13, 331.45, 331.46, 331.82, 331.84 - 331.86, 331.103 - 331.107, and 331.143. The commission proposes new §§331.87, 331.108, 331.109, and 331.220 - 331.225.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), Texas Water Code (TWC), Chapter 27 (also known as the Injection Well Act), and House Bill (HB) 3838, 80th Legislature, 2007. This proposed rulemaking intends to incorporate new provisions for Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. The bill requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery.

The proposed amendments to Chapter 331 implement legislative requirements in SB 1604, establishing requirements for area permits and production area authorizations for in situ recovery of uranium, and HB 3838 establishing registration requirements for wells used in the development of an application for an injection well permit authorizing in situ recovery of uranium and proposes revisions based on the commission directed staff review of the in situ program and stakeholder input received.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 55, 305, and 336.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §331.2 by revising nine existing definitions and adding two new definitions. Existing definitions under §331.2(83) - (85) and (86) - (112) will be renumbered

to (84) - (86) and (88) - (114), respectively to accommodate the two new definitions.

Proposed revision to the existing definition of "Activity" under §331.2(2) is to include the construction or operation of an injection or production well for the recovery of minerals, or any other classes of injection wells regulated by the commission. This proposed change is necessary for completeness of the term "activity", which is used throughout the rules that apply to underground injection. With this proposed revision, any references to activities regulated under the TCEQ UIC Program will include construction and operation of injection wells.

The proposed revision to the existing definition of "Area permit" under §331.2(10) is to specify that an area permit is for two or more production or monitor wells used in operations associated with Class III well activities. This proposed change is necessary to specify that area permits are issued only for Class III wells and not for other types of injection wells regulated by the commission.

The proposed revision to the existing definition of "Control parameter" under §331.2(28) is to clarify that the term includes physical parameters, such as pH or specific conductivity, and that monitoring of a control parameter includes measurement with instrumentation or laboratory analysis of a groundwater sample from a monitoring well. Control parameters are characteristics of the groundwater that are monitored to detect the movement of mining solutions out of the production zone at a Class III well site. In the past, control parameters were almost always a chemical attribute of the groundwater, such as the concentration of certain metals. Groundwater samples were collected and shipped to a laboratory where the concentrations of control parameters were measured using chemical analytical techniques. Physical characteristics of groundwater, however, also can serve as control parameters. Furthermore, advances in technology now allow measurement of certain parameters in the borehole. The proposed change is necessary to allow physical parameters to be used as control parameters, and to allow for measurement of certain control parameters using suitable instrumentation.

The proposed revision to the existing definition of "Excursion" under §331.2(38) is to clarify that the determination of movement of mining solutions into a monitor well must be based on chemical analysis or instrument measurement of control parameters from groundwater.

The proposed revision to the existing definition of "Mine plan" under §331.2(63) would expand the term to include a schedule of proposed mining activities at a Class III well site. Currently, the definition includes only a map of the permit area. The expanded definition would address the need for the holder of a Class III well area permit to provide the commission information regarding the sequence and timing of mining, and a schedule for aquifer restoration.

The proposed revision to the existing term "Monitor well" under §331.2(64) would clarify that the term has the same meaning as "monitoring well" as defined in TWC, §27.002. "Monitor well" is used throughout the Chapter 331 rules, and this proposed change would provide consistency between these rules and the TWC with regards to the meaning of the two terms. Also, the commission proposed to revise §331.2(64)(A) to clarify that designated monitor wells are those wells for which water quality sampling or measurements with instrumentation is required. This change is necessary to clarify that water quality sampling may be accomplished by measuring water quality with appropriate instruments in addition to determining water quality through conventional chemical analysis of groundwater samples.

The proposed revision to the existing term "Production area authorization" under §331.2(82) would clarify that the term refers to an authorization issued under the terms of a Class III well area permit, and that this authorization includes requirements regarding production and aquifer restoration. The current definition does not clearly indicate that this term applies to Class III well operations.

Proposed §331.2(83) would define "Production well." This term is used in existing rules, and should be defined. The proposed definition would clarify that a production well is a well that is used for mineral recovery, not for waste injection.

The commission proposes to amend the term "Restored aquifer" under existing §331.2(87) to restrict the term to that portion of an aquifer that is within the boundaries of an area permit, and that the aquifer has been restored in accordance with the requirements of §331.104, Establishment of Baseline and Restoration Values. This proposed change is necessary to clarify that "aquifer restoration" applies to the aquifer within the permit boundary, not the entire aquifer.

Proposed §331.2(87) would define the term "Registered well." HB 3838 required the commission to establish a registration system for wells that would be used to develop applications for Class III well area permits. This new definition is necessary to define this term that is used in proposed Chapter 331, new Subchapter M, which is discussed further in this section.

The proposed rule would amend the existing term "Verifying analysis" under current §331.2(107) to include measurements with instrumentation. Physical characteristics of groundwater also can serve as control parameters, and advances in technology now allow measurement of certain parameters in the borehole. The proposed change is necessary to allow physical parameters to be used as control parameters, and to allow for measurement of certain control parameters using suitable instrumentation.

Proposed §331.7(g) would address term limits of existing Class III well area permits. This proposed change would implement the requirements of SB 1604, which amended the TWC by adding TWC, §27.0513. Prior to adoption of SB 1604, Class III well area permits were issued without an expiration date. Under SB 1604, the holder of a Class III area well permit issued prior to September 1, 2007 must submit an application for permit renewal before September 1, 2012. Any permit issued prior to September 1, 2007 will expire on September 1, 2012 if an application for renewal is not submitted to the commission before September 1, 2012, although the holder of the permit would not be relieved of obligations under the permit or applicable rules to restore groundwater or to plug and abandon wells authorized under the permit.

The commission proposes to amend §331.13(e) to allow the commission to delegate to the executive director the authority to designate an aquifer exempt if no request for a public hearing is received during the comment period provided in public notice. Delegation of authority by the commission to the executive director in uncontested matters is a common practice for most permitting matters addressed by the commission, including injection well permits that may be associated with an aquifer exemption. Delegation in this matter would reduce the time needed to process requests for aquifer exemptions.

The commission proposes to amend §331.45(4)(B) to clarify that a demonstration of mechanical integrity is not necessary for baseline wells. The existing rule currently excludes monitor wells from this requirement, and baseline wells are constructed and operated similarly to monitor wells. Unlike Class III injection and production wells through which mining fluids are being pumped on a near-continuous basis, no injection occurs in baseline and monitor wells, and only native groundwater periodically is pumped from baseline wells.

The commission proposes to amend §331.46(e) to remove any apparent implication regarding the approval of the use of materials other than cement for plugging wells. Under the current language in subsection (e), use of a material other than cement for plugging wells requires approval in writing by the executive director. This current language implies that this approval may be granted by means other than a permit amendment or modification. Closure of wells must be in accordance with an approved plugging and abandonment plan. A request to plug a well with material other than cement should be subject to the applicable rules for amendments or modifications, and subject to applicable public notice and public participation requirements.

The commission proposes to amend §331.82(a) to clarify that the casing in Class III wells must be cemented from the bottom of the casing to the surface. The proposed revision is necessary as the current rule requires casing be cemented to the surface, which implies casing could be cemented from a point above the bottom of the casing to the surface.

The commission proposes to amend §331.82(c)(2) to require a demonstration of mechanical integrity prior to injection or production from a Class III well and to require a pressure test each time a tool is placed in a Class III well when that tool could affect the mechanical integrity of the well. The current rule requires a demonstration of mechanical integrity following construction of the well, but not specifically before the well is put into operation. Although it is unlikely an operator of a Class III well would inject or produce fluids from the well prior to testing it for mechanical integrity, the proposed rule revision would clarify that the mechanical integrity of a well must be demonstrated prior to operation of the well. Under existing §331.82(c), an additional test for mechanical integrity on a well may be required if the well has been repaired. During the life of a well, tools may be placed in and withdrawn from a well for various reasons such as to inspect casing, change or repair pumps or tubing, or to clean well screens. These types of actions can result in damage to the well casing, which could affect the mechanical integrity of a well. The proposed revision would allow the executive director to require an operator to pressure test a well whenever tools have been placed into the well that could damage casing and affect the mechanical integrity of a well.

The commission proposes to amend §331.82(c)(2)(A)(i) to clarify that Class III wells can be tested for significant leaks using either a single point resistivity survey or a pressure test. The language in the current rule is unclear, and suggests that both tests are required. The intent of the rule is either method may be used to test for significant leaks in a Class III well.

The commission proposes to amend §331.82(c)(2)(A)(ii) to clarify that cement records can be used to demonstrate the absence of significant fluid movement in a Class III well.

The commission proposes to amend §331.84(c) to clarify that the fluid level in a Class III well must be measured when such measurement is required in a permit. Section 331.84(c) is also amended to clarify that the required bi-monthly samples must be taken at 15-day intervals so as to ensure the collection of independent samples. The proposed 15-day interval would replace the current two-week interval that resulted in three samples a month for two months in each year.

The commission proposes an amendment to replace requirements in existing §331.85(a) with new reporting requirements in §331.85(a). Under the existing rule, an updated map illustrating all newly constructed or newly discovered wells was required under existing subsection (a). Proposed subsection (a) would require an annual report by December 31st of each year. This report, in addition to the updated map that is presently required, must also include data on any newly constructed or newly discovered wells, and updated cost estimates for well closure and aquifer restoration, an update mine map, an updated mining schedule, and an inventory of all injection, production, and monitor wells. This information has been required in the past, and the proposed rule would consolidate it into one report due at the end of the year, which would assist commission staff in reviewing this information in a timely manner.

The commission proposes §331.85(h) to require an operator of a Class III well facility to maintain at the facility copies of all information required under §331.85. Proposed §331.85(h) would assist TCEQ field personnel to more expeditiously determine facility compliance with all applicable rules and permit requirements during an inspection of a facility.

The commission proposes to amend §331.86(a) to remove language that implies plugging and abandonment plans may be modified though written approval from the executive director. The intent of this section is that any revision of plugging and abandonment plans must be done through a permit amendment or modification, which would be approved by the executive director.

The commission proposes new §331.87. Under this proposed new section, field measurements, using instrumentation, of groundwater parameters is allowed for monitoring purposes provided the field measurement is at least equivalent in quality and sensitivity as that of a chemical analysis. This proposed new section is necessary to address advancements in technology that allow field measurements for certain groundwater quality parameters.

The commission proposes to amend §331.103(a) to clarify that the placement of monitor wells to meet the spacing requirements of subsection (a) may be based on information from exploration drilling, as updated with information from production drilling. It is the commission's belief that information from these types of wells is sufficient for the determination of monitor well placement to meet the spacing requirements in subsection (a). As a further point of clarification, monitor wells must meet the spacing requirements in §331.103(a) with respect to the outermost injection and production wells within the production area, not with respect to injection and production wells in the interior of the productions area.

The commission proposes to amend §331.104 to address both the establishment of baseline groundwater values for restoration and the establishment of parameters for excursion detection.

The commission proposes to amend §331.104(a) to require that groundwater samples from monitor and baseline wells be both independent and representative, as both of these characteristics are necessary for valid statistical analysis. A statistically-independent sample is required so that one sampling event will not

affect the results or quality of a subsequent sampling event from the same well.

The commission proposes an amendment to re-designate existing §331.104(b) as subsection (d) with no other changes, and would remove existing subsection (c), as discussed elsewhere in this preamble. Under proposed §331.104(b) all baseline wells must be completed within the production zone. Under existing §331.104(d), baseline water quality values for determination of restoration can be based on analytical measurements of groundwater samples from either the baseline wells completed in the production zone within the production area, or from monitor wells completed in the production zone but outside of the production area (that is, outside of the zone of uranium mineralization that is to be mined using in situ techniques). It is the commission's belief that aquifer restoration goals should be based on data from groundwater samples collected from the baseline wells only, as these are the wells that are completed in the production zone within the area of mineralization. Information from wells outside of the production area does not provide pre-mining information on the quality of groundwater within the production zone of the production area. Proposed §331.104(b) would also require the owner or operator to propose a suite of groundwater parameters for restoration. This suite of parameters must include all parameters that occur in the groundwater within the production zone of the production area prior to in situ operations, all parameters that are in the solutions injected into the production zone, all parameters that may be dissolved from the production zone into the groundwater during in situ operations, uranium, and radium 226. The commission's current application form for Class III well area permits (form TCEQ-10313) requires analysis for 26 constituents for aquifer restoration, but current rules do not specify what parameters should be used as a basis for aquifer restoration. It is the commission's belief that the determination of the suite of parameters for aquifer restoration should be based on rule, and therefore is proposing §331.104(b). Furthermore, experience has indicated that certain parameters in the list of 26 specified in the permit application do not always occur in the groundwater at sites mined in Texas. Conversely, other parameters, not included in the list of 26 parameters, also could occur in Texas groundwater or be introduced into the groundwater by in situ operations. Therefore, proposed §331.104(b) is designed to allow (and require) an applicant to establish a suite of aquifer restoration parameters based on the characteristics of the groundwater on a site-by-site basis.

The commission proposes §331.104(c), under which a minimum of five baseline wells or one baseline well for every four acres of production area, whichever is greater, are required. Under existing §331.104(a)(2), which would be removed under the proposed amendment, the production area baseline value must be based on samples from at least five wells completed in the production zone. Although this current rule allows for more than five baseline wells, owners and operators typically propose only five baseline wells. Because a production area may range in size from a few acres to several tens of acres, five wells may or may not provide sufficient characterization of the groundwater for establishment of restoration goals. The proposed amendment would ensure a minimum number of baseline wells based on acreage of a production area. Proposed §331.104(c) would also require all baseline wells to be sampled and the results of analyses of those samples be used to determine the suite of restoration parameters.

The commission proposes to remove existing §331.104(c), under which an owner or operator is required to determine control parameters upper limits from baseline water quality values. It is the commission's belief that control parameter upper limits should be based on information from monitor wells, not baseline wells. Control parameter upper limits are the values of certain parameters that are monitored in the monitor wells that encircle a production area. The purpose of this monitoring is to determine if mining fluids have migrated from the production area by detection of changes in water quality in the monitor wells. In order to do so, the water quality in the monitor wells must be established. Water quality in the monitor wells should be established from information from the monitor wells, which are located outside the zone of mineralization, not from baseline wells, which are completed within the zone of mineralization.

As discussed previously, existing §331.104(b) is being relettered to §331.104(d) under this proposed rulemaking. No other changes to §331.104(d) are proposed. Existing §331.104(d) is proposed to be deleted so that the requirements for establishing restoration table values can be placed in §331.107.

The commission proposes §331.104(e) to require operators to determine control parameters for production and nonproduction wells. The proposed rule also allows an operator to determine the presence of an excursion by either of two methods. First, the value of a control parameter may be taken to be the mean of at least 30 measurements from groundwater samples collected from monitor wells prior to in situ mining activities. The presence of an excursion is determined by directly comparing a sample result from a monitor well to this mean value for a control parameter. Second, the presence of an excursion may be determined using a statistical hypothesis test proposed by the operator and approved by the commission.

Under existing §331.104(c), upper limits for control parameters are to be determined from baseline water quality values. Many operators make this determination by taking the highest pre-mining measurement for a control parameter, either from the baseline sample measurements or the monitor well sample measurements, and applying a multiplier to this value. It is the commission's belief that values for control parameters for determining the occurrence of an excursion should be based on information from monitor wells, not baseline wells. Also, the method of selecting the highest pre-mining value, then increasing this value by some factor appears to be a modification of a nonparametric upper prediction limit statistical method. This method, without modification, may provide adequate detection of an excursion, provided the number of future comparison is taken into account and provided a sufficient number of measurements are used to determine a nonparametric upper prediction limit. Otherwise, depending on the conditions at a site, a nonparametric upper prediction limit may be an inappropriate method for detecting an excursion.

The proposed requirement that the upper value for a particular control parameter be the average of at least 30 measurements of that parameter would ensure that the average value for that parameter is an acceptable estimation of the true mean of that parameter in the groundwater. The proposed subsection would allow for a direct comparison methodology for determining if an excursion had occurred. Alternatively, an owner or operator may propose a statistical method to be approved by the executive director. This allows the owner or operator to propose a statistical method other than a direct comparison methodology for the detection of excursions.

The commission proposes to amend §331.104(f) to address requirements for groundwater restoration in the case where an

owner or operator has requested to re-enter a previously-mined area for additional mining. Under this subsection, an owner or operator would be required to meet the groundwater restoration goals previously established for the production area to be re-entered. It is the commission's belief that when a previously mined area is to be re-entered for additional in situ recovery of uranium, the groundwater restoration goals should be those established prior to in situ mining operations, or as modified by any amendments in accordance with §331.104, Establishment of Baseline and Restoration Values and Control Parameters for Excursion Detection and §331.107, Restoration.

The commission proposes to amend §331.105(1) - (4) to refer to Routine Monitoring, Monitoring Duration, Verifying Analysis, and Excursion Monitoring, respectively, instead of Routine Sampling, Duration of Monitoring Program, Verifying Analysis, and Sampling Frequency when mining solutions are present, respectively. The proposed rule also would amend existing §331.105(1), (3), and (4) to clarify that monitoring includes instrument measurements. Additionally, the proposed amendment would revise existing §331.105(3) to clarify that a verifying analysis must be done if the upper control limit is equaled or exceeded in any monitor well. Lastly, the proposed amendment would revise existing §331.105(1) and (4) to require monitoring results for control parameters to be completed by the second working day after a sample is collected.

The commission proposes to amend §331.106 to refer to the existence of an excursion rather than that mining solutions are present. By making this change, the language in §331.106 would refer to a term, in this case, "excursion" that is defined in existing §331.2, Definitions, rather than the undefined phrase, "that mining solutions are present."

The commission proposes to amend §331.106(2) to require, in addition to other parameters identified in this paragraph, analysis for uranium and radium-226 for a verifying analysis. These two parameters are mobilized into the groundwater during in situ mining. Their presence in a verifying analysis of a groundwater sample from a monitor well would provide evidence that an indication of an excursion was associated with the movement of a mining solution from the production area to a monitor well.

The commission proposes to amend §331.107(a) to require that groundwater in the production zone of the production area must be restored when mining is complete, to require restoration be achieved for all parameters specified in the suite of restoration parameters, and to specify that restoration may be demonstrated by either of two methods. The first method is a direct comparison between the measurement from a groundwater sample for a restoration parameter and the mean for that parameter as determined from all measurements from groundwater samples collected from baseline wells prior to mining activities. The second method is a statistical test proposed by the owner or operator and approved by the executive director. As part of a permit of production area authorizations application, the applicant would need to provide a sufficient explanation for the use of alternative statistical methodology for determining restoration table values. These proposed methods are similar to those for excursion detection and provide the owner or operator two statistical methods for determining if restoration has been achieved.

The commission proposes to amend §331.107(b) and (c) to specify that aquifer restoration applies to a production area, not the entire permitted area.

The commission proposes to amend §331.107(d) to identify the information that must be submitted with the required semi-annual restoration progress report. This information includes analytical data, graphs of analytical data for each restoration parameter, the volume of fluids injected and produced, the volume of fluids disposed, water level measurements, hydrographs for each baseline and monitor well, a potentiometric map for each production area, and a summary of progress achieved towards aquifer restoration.

The commission proposes §331.107(e) under which stability sampling is required once restoration has been demonstrated. Existing §331.107(e) would be re-designated as subsection (f), and would be amended to extend the period for stability sampling from 180 days to one year. This proposed extended period for stability sampling would allow the owner or operator to determine if water quality is affected by seasonal changes.

The commission proposes an amendment to re-designate existing §331.107(f) as subsection (g), and amend the subsection to require a permittee to notify the executive director of a determination to cease restoration operations if the permittee decided to request amendment of the restoration values. Under existing §331.107(f), if a permittee is unsuccessful in restoring the groundwater in a production zone within a production area, he or she may cease restoration operations without notifying the executive director, and request the restoration values to be raised, and the executive director can approve such an amendment after considering the factors identified in §331.107(g)(1). Under the proposed rule, written permission from the executive director would be required for a permittee to cease restoration activities. The permittee would also be required to submit the request for amendment of restoration values within 120 days of receipt of authorization from the executive director to cease restoration operations. These proposed changes would allow the executive director to evaluate the permittee's decision to cease restoration operations, and would require the permittee to submit a request for amendment in a timely manner.

The commission proposes to amend §331.107(g)(3) to require a permittee to conduct stability sampling for a period of two years (instead of one year) if restoration values are amended. The inability to restore groundwater to the initial restoration values is an indication that in situ mining may have altered the chemistry of the groundwater within the production zone of a production area, and that this change has resulted in making the affected groundwater resistant to a reduction in the concentrations of parameters in the groundwater. As this affected groundwater moves through natural groundwater flow, it would migrate into areas adjacent to the production zone that are unaffected by in situ mining. Once in these areas, it is the commission's belief that chemically reducing conditions in these areas could immobilize these parameters, decreasing the risk of offsite contamination. However, because there may be some risk of offsite contamination in such a case, the commission is requiring a stability period of two years when restoration values are amended. Under the proposed rule, the commission would allow a permittee to provide a demonstration that a period of less than two years is appropriate.

The commission proposes to amend §331.107(g)(4) to require a permittee to resume restoration efforts if an amendment to the restoration values is not granted.

The commission proposes new §331.108. Under the proposed revision to §55.201, an application for a production area authorization is not subject to a contested case hearing when the application addresses the initial establishment of monitor wells, and

the executive director uses the recommendations of an independent, third-party expert. Under SB 1604, the TWC was amended by adding TWC, §27.0513(e), under which the requirements for use of an independent third-party expert are identified.

The commission proposes new §331.108(a) under which the executive director may use the recommendations of an independent third-party expert if requested by an applicant. Under this proposed subsection, the executive director would use the recommendations from an expert provided the expert meets the qualifications identified in §331.108(b), the applicant pays for the cost of the work of the expert, the applicant is not involved in the selection of the expert or the direction of the expert's work, the expert's recommendations meet all applicable statutory and regulatory requirements for the initial establishment of monitor wells, and, in the opinion of the executive director, the expert's recommendations are necessary for the protection of underground sources of drinking water.

The commission proposes new §331.108(b) to require that an expert be either a licensed professional engineer or a licensed professional geoscientist who currently is authorized to practice engineering or geology, respectively, in Texas. In determining whether to designate a person as an expert, the executive director would also consider the person's experience in geology and hydrogeology, experience with in situ mining of uranium, current and previous work experience with the applicant, current and previous work experience with person's or entities that are in opposition to in situ uranium mining, and any other factors the executive director considers to be relevant.

The commission proposes new §331.108(c), under which the executive director would not designate an expert unless a written request from the applicant is received. It is the commission's belief that the choice to use an expert lies with the applicant, who would have to pay the cost of the expert.

The commission proposes new §331.108(d). Under this new subsection, an application for a production area authorization for the initial establishment of monitor wells is not subject to opportunity for a hearing if the executive director uses the recommendations of an expert.

Under proposed new §331.108(e), if the executive director does not use the recommendations of an expert, the application is subject to opportunity for a contested case hearing.

The commission proposes new §331.108(f), under which a person may request to be considered an expert by submitting information to the executive director to demonstrate qualifications under this section.

The commission proposes new §331.108(g), the use of an expert does not constitute the applicant's selection of the expert.

The commission proposes new §331.108(h), an expert cannot be an employee of the commission.

The commission proposes new §331.109(a), under which financial assurance for groundwater restoration must be based on cost estimates provided under §331.143, Cost Estimates for Plugging and Abandonment and Aquifer Restoration.

The commission proposes new §331.109(b), under which financial assurance for plugging and abandonment of wells must be based upon cost estimates provided under §331.143.

The commission proposes to amend §331.143(a) to include a cost estimate for aquifer restoration for each production area authorization. Existing §331.143(a) requires a cost estimate for plugging and abandonment only. Although financial assurance for aquifer restoration is held under a radioactive materials license, cost estimates for aquifer restoration are reviewed by the UIC program staff. This proposed change would formalize an interagency arrangement to clearly indicate that responsibility for review of cost estimates for aquifer restoration lies with the UIC program and establish that an applicant must submit the cost estimates for groundwater restoration of a permit or production area as part of the application. Also, the requirement that plugging and abandonment cost estimates, as well as aquifer restoration cost estimates, must equal the maximum cost of each of these items at the point in a facility's operating life is moved to proposed subsection (b). This proposed change is necessary to more clearly state the requirements for cost estimates for both plugging and abandonment as well as for aquifer restoration.

The commission proposes the replacement of existing §331.143(b) with proposed subsection (b) that would require that both the cost estimates for plugging and abandonment and for aquifer restoration must be included. The current rule only refers to plugging and abandonment cost estimates.

The commission proposes an amendment to re-designate existing §331.143(b) to subsection (c). Proposed subsection (c) would refer to cost estimates both for plugging and abandonment and for aquifer restoration.

The commission proposes §331.143(d), under which the owner or operator of a Class III well facility would be required, on or before December 31st of each year, to review and update as necessary the cost estimates required under §331.143(a). Amended §331.143(a) also requires the owner or operator to submit these updates to the executive director no later than January 31st of each year. Although these estimates currently are submitted to the executive director, there is no specific date on which they must be submitted. The proposed rule would establish a specific date for submission of this information.

The proposal would amend Chapter 331 by adding proposed Subchapter M: Requirements for Existing Wells Used for Development of Class III UIC Well Applications. This new subchapter would implement the requirements of HB 3838. Under this legislation, the TWC was amended to add TWC, §27.023 and §27.024, and amended TWC, §27.073. These new statutory sections establish requirements for the registration of wells that are used for the development of a Class III injection well permit application. These wells, which initially are drilled under an exploration permit issued by the RRC, are not plugged because they can be used to develop an application for a Class III injection well area permit. Currently, these wells continue to be regulated by the RRC until they are cased, at which time regulation of these wells is transferred to the TCEQ through an informal agreement with the RRC. Although regulation of these wells is transferred to the TCEQ, current rules do not address how they are to be regulated. The proposed new subchapter would establish regulatory requirements for these wells, including development of a register to document their existence. Ultimately, these wells would either be permitted under a Class III injection well area permit or would be plugged and abandoned.

The commission proposes new §331.220 to establish that the requirements of new Subchapter M apply to wells that are used to obtain information to develop an application for a Class III injection well area permit for in situ mining of uranium.

Under the requirements of HB 3838, any wells that are used for the development of an application for a Class III injection well

area permit must be registered with the TCEQ. The commission proposes new §331.221(a) to require all existing wells used to develop a Class III injection well permit application be registered with the TCEQ within 30 days of completion and prior to submission of the application, and would require wells drilled after submission of the application to be registered within 30 days of well completion.

The commission proposes new §331.221(b), under which the type of information required for well registration is identified. This information includes a unique well designation, well location, well depth, well construction information, well operator, name of person who owns land on which the well is located, water level data, and, if applicable, the groundwater conservation district in which the well is located.

The commission proposes new §331.221(c), under which the owner or operator would be required to maintain mechanical integrity of any registered well, as defined in proposed §331.2(87). This proposed subsection also requires that any registered well not cause or allow movement of fluid that would result in groundwater pollution. Also, this proposed subsection prohibits injection in a registered well.

The commission proposes new §331.221(d), under which an owner or operator is required to plug and abandon any registered well that is not subsequently authorized under a Class III injection well area permit.

The commission proposes new §331.221(e), under which registered wells are not subject to the commission's permitting, public notice, or hearing requirements. Under TWC, §27.023(b), registered wells are excluded from these requirements, unless they are converted to a well authorized under a Class III injection well permit under proposed new §331.222.

The commission proposes new §331.222, which addresses changing the status of a registered well. Under this proposed new section, once a registered well is authorized under a Class III injection well area permit, the registration status of the well ceases and the well is subject to all applicable commission rules, including those regarding permitting, public notice, and hearing requests.

The commission proposes new §331.223(a), under which an owner or operator is required to provide certain information on registered wells to a groundwater conservation district if the proposed permit boundary is within the district's area. The owner or operator must provide to the district information regarding wells that are not in the public record when such wells are encountered, locations of all wells that are recorded in the public record and that are within the proposed permit area, pre-mining water quality data collected from registered wells, the amount of water produced monthly from each registered well, and a record of strata encountered from each registered well, except for information that is confidential.

The commission proposes new §331.223(b), under which an owner or operator of a registered well is required to provide the information required under proposed new §331.223(a) to the groundwater conservation district within 90 days of receipt of the final information for that well.

The commission proposes new §331.224, under which the executive director may require a person who receives a Class III injection well area permit or a production area authorization to maintain and provide accurate records regarding the character of strata encountered in drilling an injection well, monitor well, or production well.

The commission proposes new §331.225 under which the commission may require an applicant for a Class III injection well permit to provide a geophysical or drilling log of an existing well.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the Texas Department of State Health Services (DSHS or Department) due to administration or enforcement of the proposed changes to the Chapter 331 rules. The proposed changes to Chapter 331 are part of a larger proposal to implement the second phase of the transfer of certain regulatory responsibilities for radioactive waste from DSHS to the TCEQ as required by SB 1604, 80th Legislature, 2007. The second phase rulemaking also incorporates changes required by HB 3838, 80th Legislature, 2007, relating to in situ uranium mining. The 80th Legislature provided additional staff and funding to the TCEQ to implement the transfer of the regulatory responsibilities. No significant fiscal implications are anticipated for regulated entities as a result of the administration or enforcement of the proposed Chapter 331 rule revisions.

The primary purpose of the proposed rules is to implement SB 1604. The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department to the commission. Technical requirements for these programs have been transferred from the Department's rules into new subchapters of the commission's radioactive substantive rules in Chapter 336.

The proposed rules to Chapter 331 implement legislative requirements in SB 1604, establishing requirements for area permits and production area authorizations for in situ recovery of uranium, and HB 3838, establishing registration requirements for wells used in the development of an application for an injection well permit authorizing in situ recovery of uranium. The proposed rules also contain revisions based on the commission directed staff review of the in situ program and stakeholder input that the agency received.

Among the proposed rules would be a change to require that a permit for Class III wells for uranium mining issued before September 1, 2007 expire on September 12, 2012 unless an application for permit renewal is submitted before September 1, 2012. If the permit for the Class III wells for uranium mining expires, the permit holder is still obligated to operate under the existing permit or applicable rules. The proposed rules also require that all new wells associated with the mining operations be cased and cemented from the bottom of the casing to the surface and that the spacing of the designated production zone monitor wells be no greater than 400 feet from the production area based on the exploratory drilling and updated by production drilling. The distance between the mine area monitor wells should be 400 feet or less. The proposed rules also provide well registration requirements for wells that will be used to gather information needed for a Class III well application. These wells must be registered with the TCEQ until they either are permitted as Class III wells or they are plugged.

The new requirements proposed under Chapter 331 are not expected to result in significant fiscal implications for the agency

or other units of state or local government. The agency will use current legislative appropriations to implement the proposed changes.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

In general, no significant fiscal implications are anticipated for businesses or individuals as a result of the proposed rule changes. Permits for Class III wells for uranium mining operations issued before September 1, 2007 will expire on September 12, 2012 unless an application for permit renewal is submitted before September 1, 2012. The cost of preparing a renewal application for a Class III well permit will vary from operator to operator. The permit itself would cost approximately $150. Because the renewals of Class III well permits are a new requirement, historical information projecting any other costs necessary to prepare the permit renewal are not available, but consultant fees may cost $20,000 to $40,000.

Proposed monitoring well spacing and well casing requirements are not new. The intent of the current rule has been that wells are cemented from the base of the casing to the surface. The proposed rule is meant to specifically state this requirement and therefore there are no new costs for this requirement. In addition, the proposed rules do not change any of the spacing requirements for monitor wells. The proposed rule clarifies that spacing of monitor wells may be based on information from exploratory drilling, and that adjustments to the locations of monitor wells to meet spacing requirements may be required as new information is obtained through production drilling. There are no new costs associated with this requirement.

The proposed rules also provide well registration requirements for wells that will be used to gather information needed for a Class III well application. These wells must be registered with the TCEQ until they either are permitted as Class III wells or they are plugged. There is no fee for registration. However, the operator will be required to provide information from these wells to groundwater conservation districts if the wells are in the district's jurisdiction. There will be some costs for these notification requirements but they are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. The changes proposed are part of a larger proposal to revise the commission's radiation control rules. The proposed rules establish requirements for area permits and production area authorizations for in situ recovery of uranium, and HB 3838 required registration requirements for wells used in the development of an application for an injection well permit authorizing in situ recovery of uranium. No small or micro-businesses are anticipated to be affected by the proposed rules.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required by SB 1604 and HB 3838.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action implements legislative requirements in SB 1604, establishing requirements for area permits and production area authorizations for in situ recovery of uranium, and HB 3838 establishing registration requirements for wells used in the development of an application for an injection well permit authorizing in situ recovery of uranium. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not alter in a material way the existing requirements for injection wells used for in situ recovery of uranium. The proposed rulemaking action also amends technical requirements and for radioactive materials licenses and establishes fees for applications and waste disposal in Chapter 336, amends license application requirements and permit term limits in Chapter 305, amends financial assurance requirements in Chapter 37, amends public notice requirements in Chapter 39, and amends public participation requirements in Chapter 55.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's UIC program is authorized by the United States Environmental Protection Agency and the proposed changes for injection well permits, production area authorizations, and exempt aquifers do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards for production area authorizations or

for registrations for wells used in the development of a permit application. The proposed rules are compatible with federal law.

The proposed rules do not exceed a requirement of state law. TWC, Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. SB 1604 amended the Injection Well Act to establish requirements for area permits used for in situ recovery of uranium, and production area authorizations. HB 3838 amended the Injection Well Act to require the registration of wells used in the development of a permit application. The purpose of the rulemaking is to implement requirements consistent with TWC, Chapter 27, as amended by SB 1604 and HB 3838.

The proposed rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the United States Environmental Protection Agency, and the proposed rules are compatible with the state's delegation of the UIC program.

The proposed rules are adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for production area authorizations.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement legislative requirements in SB 1604, establishing requirements for area permits and production area authorizations for in situ recovery of uranium, and HB 3838 establishing registration requirements for wells used in the development of an application for an injection well permit authorizing in situ recovery of uranium. The proposed rule changes in Chapter 331 would substantially advance this purpose by amending the requirements applicable to in situ uranium mining.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules for injection wells, permits, production area authorizations and well registrations do not affect real property. The proposed rules apply only to those who use or apply for authorization of injection wells for in situ recovery of uranium. Significant requirements for wells used for in situ recovery of uranium apply in the absence of these proposed rules, including statutory requirements from SB 1604 and HB 3838. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.7, 331.13

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendments implement Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007, and TWC, §27.023 and §27.0513.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) (No change.)

(2) Activity--The construction or operation of any of the following:

(A) an injection well for disposal of waste; [~~, or of~~]

(B) an injection or production well for the recovery of minerals;

(C) pre-injection units for processing or storage of waste; or [~~,~~]

(D) any other class of injection well regulated by the commission.

(3) - (9) (No change.)

(10) Area permit--A [~~An injection well~~] permit that [~~which~~] authorizes the construction and operation of two or more similar injection, production, or monitoring wells used in operations associated with Class III well activities [~~wells~~] within a specified area.

(11) - (27) (No change.)

(28) Control parameter--Any physical parameter or chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well. Monitoring includes measurement with instrumentation or sample collection and laboratory analysis.

(29) - (37) (No change.)

(38) Excursion--The movement of mining solutions, as determined by analysis for control parameters, into a designated monitor well.

(39) - (48) (No change.)

(49) Individual permit--A permit, as defined in the Texas Water Code (TWC), §27.011 and §27.021, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 27[~~,~~] (other than TWC, §27.023).

(50) - (62) (No change.)

(63) Mine plan--A plan for operations at a mine, consisting of: [~~A map of adopted mine areas and an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.~~]

(A) a map of the permit area identifying the location and extent of existing and proposed production areas; and

(B) an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(64) Monitor well--Any well used for the sampling or measurement with instrumentation of any chemical or physical property of subsurface strata or their contained fluids. The term "monitor well" shall have the same meaning as the term "monitoring well" as defined in Texas Water Code, §27.002.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling or measurement with instrumentation is required.

(B) - (C) (No change.)

(65) - (81) (No change.)

(82) Production area authorization--An authorization [~~A document~~], issued under the terms of a Class III [~~an~~] injection well area permit, approving the initiation of mining activities in a specified production area within a permit area , and setting specific conditions for production and restoration in each production area within an area permit.

(83) Production well--A well used to recover minerals through in situ solution recovery. The term does not include a well used to inject waste.

(84) [~~(83)~~] Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(85) [~~(84)~~] Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances as defined in §290.38(47) of this title (relating to Definitions).

(86) [~~(85)~~] Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, and as amended.

(87) Registered Well--A well registered in accordance with the requirements of §331.221 of this title (relating to Registration of Wells).

(88) [~~(86)~~] Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(89) [~~(87)~~] Restored aquifer--An aquifer whose local groundwater quality, within the boundaries of the permit area, has, by natural or artificial processes, returned to the restoration table values established in accordance with the requirements of §331.107 of this title (relating to Restoration) [~~levels consistent with restoration table values or better as verified by an approved sampling program~~].

(90) [~~(88)~~] Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(91) [~~(89)~~] Salt cavern confining zone--A zone between the salt cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(92) [~~(90)~~] Salt cavern injection interval--That part of a salt cavern injection zone consisting of the void space of the salt cavern into which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(93) [~~(91)~~] Salt cavern injection zone--The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(94) [~~(92)~~] Salt cavern solid waste disposal well or salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Texas Railroad

Commission, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(95) [~~(93)~~] Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(96) [~~(94)~~] Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(97) [~~(95)~~] Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(98) [~~(96)~~] Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(99) [~~(97)~~] Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(100) [~~(98)~~] Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(101) [~~(99)~~] Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(102) [~~(100)~~] Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(103) [~~(101)~~] Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(104) [~~(102)~~] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(105) [~~(103)~~] Underground injection--The subsurface emplacement of fluids through a well.

(106) [~~(104)~~] Underground injection control--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(107) [~~(105)~~] Underground source of drinking water--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than l0,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(108) [~~(106)~~] Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(109) [~~(107)~~] Verifying analysis--A second sampling and analysis or measurement with instrumentation of control parameters for the purpose of confirming a routine sample analysis or measurement which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(110) [~~(108)~~] Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(111) [~~(109)~~] Well injection--The subsurface emplacement of fluids through a well.

(112) [~~(110)~~] Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(113) [~~(111)~~] Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(114) [~~(112)~~] Workover--An operation in which a downhole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

§331.7. Permit Required.

(a) - (e) (No change.)

(f) Notwithstanding subsection (a) of this section, an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes does not require a permit from the commission. The use or disposal of radioactive material under this paragraph is subject to the applicable requirements of Chapter 336 of this title [~~(relating to Radioactive Substance Rules)~~].

(g) Permits issued before September 1, 2007 for Class III wells for uranium mining will expire on September 1, 2012 unless the permit holder submits an application for permit renewal under §305.65 of this title (relating to Renewal) before September 1, 2012. Any holders of permits for Class III wells for uranium mining issued before September 1, 2007 who allow those permits to expire by not submitting a permit renewal application by September 1, 2012 are not relieved from the obligations under the expired permit or applicable rules, including obligations to restore groundwater and to plug and abandon wells in accordance with the requirements of the permit and applicable rules.

§331.13. Exempted Aquifer.

(a) An exempted aquifer is an aquifer or a portion of an aquifer which meets the criteria for fresh water but which has been designated an exempted aquifer by the commission after notice and opportunity for public hearing. Those aquifers or portions of aquifers which were designated for exemption by the Texas Department of Water Resources

in its original application for program approval submitted to the United States Environmental Protection Agency shall be considered to be exempted aquifers.

(b) - (d) (No change.)

(e) Subsequent to program approval or promulgation, the commission may, after notice and opportunity for a public hearing, identify additional exempted aquifers. The commission delegates to the executive director the authority to designate an exempt aquifer under this section if no request for a public hearing is received within the designated comment period provided in the public notice.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804559
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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SUBCHAPTER C. GENERAL STANDARDS AND METHODS

30 TAC §331.45, §331.46

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendments implement Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§331.45. Executive Director Approval of Construction and Completion.

The executive director may approve or disapprove the construction and completion for an injection well or project. In making a determination whether to grant approval, the following shall be reviewed for compliance with the standards of this chapter:

(1) - (3) (No change.)

(4) for Class III wells:

(A) (No change.)

(B) a satisfactory demonstration of mechanical integrity for all new wells, excluding monitor and baseline wells;

(C) - (F) (No change.)

§331.46. Closure Standards.

(a) - (d) (No change.)

(e) In closure of all Class I wells, Class III wells, and permitted Class V wells, a well shall be plugged in a manner which will not allow the movement of fluids through the well, out of the injection zone either into or between underground sources of drinking waters (USDWs) or to the land surface. Well plugs shall consist of cement or other materials that [~~approved in writing by the executive director, which~~] provide protection equivalent to or greater than that provided by cement.

(f) - (l) (No change.)

(m) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record, within 60 days after approval by the executive director of the closure operations, a notation on the deed to the facility property or on some other instrument which is normally examined during a title search that will, in perpetuity, provide any potential purchaser of the property the following information:

(1) (No change.)

(2) the name of the state agency or local authority with which the plat was filed, as well as the Austin address of the Underground Injection Control [~~(UIC)~~] staff of the commission, to which it was submitted; and

(3) (No change.)

(n) - (q) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER E. STANDARDS FOR CLASS III WELLS

30 TAC §§331.82, 331.84 - 331.87

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new section are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendments and new section implement Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§331.82. Construction Requirements.

(a) Casing and cementing. All new Class III wells, baseline wells, and monitor wells associated with the mining operations shall be cased, cemented from the bottom of the casing to the surface, and capped to prevent the migration of fluids which may cause the pollution of underground sources of drinking water (USDWs) and maintained in that condition throughout the life of the well. In addition, existing wells in areas where there is the potential for contamination and other harmful or foreign matter to enter groundwater through an open well, shall also be cemented to the surface and capped. The casing and cement used in the construction of each well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) - (7) (No change.)

(b) (No change.)

(c) Logs and tests. Appropriate logs and other tests shall be conducted during the drilling and construction of all new Class III wells and after an existing well has been repaired. A descriptive report interpreting the results of those logs and tests shall be prepared by a knowledgeable log analyst and submitted to the executive director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction, and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses.

(1) During the drilling and construction of Class III wells, appropriate deviation checks shall be conducted on holes, where pilot holes and reaming are used, at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Mechanical integrity, as described in §331.43 of this title (relating to Mechanical Integrity Standards), shall be demonstrated following construction of the well, and prior to production or injection. For Class III uranium solution mining wells, a pressure test shall also be conducted each time a tool that could affect mechanical integrity is placed into the well.

(A) Except as provided by subparagraph (B) of this section, the following tests shall be used to evaluate the mechanical integrity of the injection well:

(i) to test for significant leaks under §331.43(a)(1) of this title, monitoring of annulus pressure, or pressure test with liquid or gas, or radioactive tracer survey. For [~~, or for~~] Class III uranium solution mining wells only, a single point resistivity survey in conjunction with a pressure test can be used to detect any leaks in the casing, tubing, or packer; and

(ii) to test for significant fluid movement under §331.43(a)(2) of this title, temperature log, noise log, radioactive tracer survey, cement bond log, oxygen activation log. For [~~, or for~~] Class III uranium solution mining wells only, cement records that demonstrate the absence of significant fluid movement can be used where other tests are not suitable. For Class III wells where the cement records are used to demonstrate the absence of significant fluid movement, the monitoring program prescribed by §331.84 of this title (relating to Monitoring Requirements) shall be designed to verify the absence of significant fluid movement.

(B) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in subparagraph (A) of this paragraph with the written approval of the administrator of the United States Environmental Protection Agency (EPA) or his authorized representative. To obtain approval, the executive director shall submit a written request to the EPA administrator, which shall set forth the proposed test and all technical data supporting its use. The EPA administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the EPA administrator shall be published in the *Federal Register* and may be used unless its use is restricted at the time of approval by the EPA administrator.

(3) (No change.)

(d) - (i) (No change.)

§331.84. Monitoring Requirements.

(a) - (b) (No change.)

(c) Fluid level when required by permit [~~where appropriate~~] and the parameters chosen to measure water quality in monitor wells completed in the injection zone shall be monitored twice a month [~~at two-week intervals~~]. For a given month, the second sample shall be collected 15 days after the first sample is collected.

(d) - (f) (No change.)

§331.85. Reporting Requirements.

(a) Annual report. The permittee shall submit annually, by January 31st, a report including: [~~An updated map of the area of review showing locations of all newly constructed or newly discovered wells not included in the technical report accompanying the permit application or in later reports shall be submitted annually to the executive director.~~]

(1) an updated map of the area of review showing locations of newly constructed or newly discovered wells that penetrate the production zone within the area of review, not included in the technical report accompanying the permit application or in later reports; and

(2) a tabulation of data as required by §331.122(2)(B) of this title (relating to Class III Wells) for wells within the area of review that penetrate the production zone;

(3) For Class III uranium mining permits:

(A) an update of the cost estimate for well closure and groundwater restoration;

(B) an updated mine map;

(C) an updated mining schedule;

(D) an inventory of all injection, production, baseline, and monitor wells; and

(E) a document, signed by the owner or operator, or his or her designated representative, that the inventory of wells required in subparagraph (D) of this paragraph is true and correct to the best of his or her knowledge.

(b) - (d) (No change.)

(e) Routine monitoring data required in §331.84(c) and (d) of this title [~~(relating to Monitoring Requirements)~~] shall be reported at least quarterly to the executive director on a form provided by the executive director and in accordance with the form completion instructions. These reports must be postmarked no later than the tenth day of the following reporting period.

(f) - (g) (No change.)

(h) Copies of all data required under this section shall be maintained at the permitted facility such that these documents are available for inspection at all times by the executive director.

§331.86. Closure.

(a) Mine facilities. Within 120 days after acknowledgment of completion of mining activities, or if final restoration of the mine

area aquifers is required, upon completion of final restoration, the permittee shall accomplish closure of the mining facilities in accordance with approved plugging and abandonment plans submitted as part of the supplementary technical report. An [~~Modification to plugging and abandonment plans or~~] extension of time limit past 120 days must be approved in writing by the executive director.

(b) (No change.)

§331.87. Methods of Measurement.

Determination of a physical or chemical parameter in groundwater may be by chemical analysis of a sample or by field measurement by an instrument. Any field measurement of a groundwater parameter using instrumentation must be done using methods and instruments that yield a measurement that is at least equivalent in quality and sensitivity as a measurement determined by chemical analysis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER F. STANDARDS FOR CLASS III WELL PRODUCTION AREA DEVELOPMENT

30 TAC §§331.103 - 331.109

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new sections are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendments and new sections implement Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§331.103. Production Area Monitor Wells.

(a) Production zone monitoring. Designated production zone monitor wells shall be spaced no greater than 400 feet from the production area, as determined by exploratory drilling. The distance between each of the mine area monitor wells shall be [~~and~~] no greater than 400 feet [~~between the wells~~]. The angle formed by lines drawn from any production well to the two nearest monitor wells will not be greater than 75 degrees. Changes or adjustments in designated production zone monitor well locations may be authorized by the executive director so as to assure adequate containment. These wells shall be subject to the sampling, corrective action, and reporting requirements in §331.105 of this title (relating to Monitoring Standards) and §331.106 of this title (relating to Remedial Action for Excursion).

(b) (No change.)

§331.104. Establishment of Baseline and Control Parameters for Excursion Detection [~~Restoration Values~~].

(a) Independent and representative [~~One or more~~] water samples shall be collected from each of the following: [~~designated monitor well (production and nonproduction zone) and each designated production well in the permit or production area. These samples will be analyzed and the results for each well submitted and summarized on forms provided by the executive director as follows:~~]

(1) mine area monitor wells completed in the production zone;

(2) mine area monitor wells completed in nonproduction zones; and

(3) baseline wells completed in the production zone within the production area.

[~~(1) mine area baseline-the averages and ranges of the parameter values determined for the designated production zone monitor wells;~~]

[~~(2) production area baseline-the averages and ranges of the parameter values determined from at least five designated production zone wells in the production area; and~~]

[~~(3) nonproduction zone baseline-the averages and ranges by zone of the parameter values determined for designated nonproduction zone monitor wells.~~]

(b) All baseline wells must be completed in the production zone within the production area. The owner or operator shall analyze all groundwater samples from the baseline wells for an appropriate suite of parameters proposed by the operator and approved by the executive director. This suite of parameters shall be the basis for the aquifer restoration required under §331.107 of this title (relating to Restoration). In determining the suite of parameters for restoration, the owner or operator shall include:

(1) all parameters that occur in the groundwater within the production zone prior to in situ recovery;

(2) all parameters that are in the solutions injected into the production zone;

(3) all parameters that may be dissolved from the aquifer material into the groundwater during in situ recovery; and

(4) uranium and radium-226.

(c) A minimum of five baseline wells, or one baseline well for every four acres of production area, whichever is greater, shall be completed in the production zone within the production area. All baseline wells shall be sampled in accordance with subsection (a) of this section and analyzed in accordance with subsection (d) of this section. All valid analytical measurements shall be used to determine the suite of restoration parameters required under subsection (b) of this section.

(d) [~~(b)~~] All samples shall be collected, preserved, analyzed, and controlled according to accepted methods as stated in the permit and in accordance with the TCEQ Quality Assurance Project Plan (QAPP).

(e) The permittee shall propose for subsequent approval by the commission control parameters for detection of excursions in production and nonproduction wells. Control parameters shall be those constituents in the groundwater that will provide timely and reliable detection of the presence of mining solutions in production and nonproduction wells. Determination of the presence of an excursion shall be based on one of the following methods:

(1) a direct comparison between the measurement from a groundwater sample for a control parameter from a monitor well and the mean for that control parameter as determined from at least 30 sample measurements from groundwater samples collected from monitor wells prior to mining activities. If a sample measurement from a groundwater sample for a control parameter exceeds the mean, then an excursion will be assumed to have occurred; or

(2) a statistical hypothesis test proposed by the owner or operator and approved by the executive director.

(f) If a previously mined permit or production area is to be re-entered for additional in situ mining before completion of restoration under §331.107 of this title or completion of closure under §331.83 of this title (relating to Closure), baseline water quality values for determination of control parameter upper limits and aquifer restoration requirements for the area to be re-entered for mining shall be as originally required by the existing production area authorization or as modified by any amendments to the authorization pursuant to §331.104 of this title (relating to Establishment of Baseline and Restoration Values and Control Parameters for Excursion Detection) and §331.107 of this title.

(g) If a previously mined and restored area is to be re-entered for additional in situ uranium mining, baseline water quality values for determination of control parameter upper limits and aquifer restoration requirements for the area to be re-entered for mining shall be determined as required by subsections (a) - (d) of this section.

~~[(c) The baseline water quality values for a permit or production area shall be used to determine control parameter upper limits.]~~

~~[(d) The baseline water quality values for a permit or production area shall be used to determine restoration table values. Each production area authorization shall contain a restoration table. The table may be developed by using either:]~~

~~[(1) the higher value in either the column headed mine area average or the column headed production area average for parameters shown on the production area baseline water quality form for the production zone; or]~~

~~[(2) predictions of restoration quality that are reasonably certain after giving consideration to the factors specified in §331.107(f) of this title (relating to Restoration).]~~

§331.105. Monitoring Standards.

The following shall be accomplished to detect mining solutions in designated monitor wells:

(1) Routine monitoring [~~sampling~~]. Water samples and, if applicable, instrument measurements, shall be conducted in accordance with the requirements of §331.84(c) of this title (relating to Monitoring Requirements) [~~taken at least twice a month at two-week intervals~~] from all monitor wells for permit/production area(s) in which mining solutions have been introduced. Monitoring results [~~These shall be analyzed~~] for the control parameters shall be completed by the second working day and reported as required in §331.85(e) of this title (relating to Reporting Requirements). The determined values shall be entered on appropriate forms within three working days after analysis or instrument measurement. These data shall be kept readily available on site for review by commission representatives.

(2) Monitoring duration. [~~Duration of monitoring program.~~] The program of monitoring detailed in paragraph (1) of this subsection shall be continued in each permit/mine area until the executive director is officially notified that restoration has commenced. Further monitoring as required by permit shall continue until aquifer restoration and stabilization in that particular permit/mine area has been achieved in compliance with §331.107 of this title (relating to Restoration).

(3) Verifying analysis. If the results of a routine sample analysis or instrument measurement show that the value of any control parameter in any well is equal to or above the upper limit established for that permit/mine area, the operator shall complete a verifying analysis of samples taken from each apparently affected well within two days.

(4) Excursion monitoring. [~~Sampling frequency when mining solutions present.~~] During the period of time when mining solutions are present in a designated monitor well, water samples or measurements will be taken at least two times per week and monitoring results [~~analyzed~~] for all control parameters shall be completed by the second day after the sample or measurement is taken.

§331.106. Remedial Action for Excursion.

If the verifying analysis indicates the existence of an excursion [~~that mining solutions are present~~] in a designated monitor well, the operator shall take the following actions:

(1) (No change.)

(2) analysis--complete a groundwater analysis report for each affected well on forms provided by the executive director (including accuracy checks and stiff diagram) for the following: pH, calcium, magnesium, sodium, potassium, carbonate, bicarbonate, sulfate, chloride, silica, total dissolved solids (180 degrees Celsius), specific conductance and dilute conductance, uranium, radium-226 and any other specified constituents. Results shall be reported in accordance with §331.85(f) [~~(c)~~] of this title relating to Reporting Requirements).

(A) - (B) (No change.)

§331.107. Restoration.

(a) Aquifer restoration [~~Restoration table~~]. Groundwater in the production zone within the production area must be restored when mining is complete. Upon issuance and renewal, Class III permits or [~~and~~] production area authorizations shall contain a description of the method for determining that groundwater in the production zone within the production area has been restored. Restoration must be achieved for all values in the restoration table of all parameters in the suite established in accordance with the requirements of §331.104(b) of this title (relating to Establishment of Baseline and Control Parameters for Excursion Detection). [~~restoration table listing restoration goals as provided by §331.104 of this title (relating to Establishment of Baseline and Restoration Values).~~]

(1) Restoration table. Each permit or production area authorization shall contain a restoration table for all parameters in the suite established in accordance with the requirements of §331.104(b) of this title. A restoration table value for a parameter shall be established by:

(A) The mean concentration or value for that parameter based on all measurements from groundwater samples collected from baseline wells prior to mining activities; or

(B) A statistical analysis of baseline well information proposed by the owner or operator and approved by the executive director that demonstrates that the restoration table value is representative of baseline quality.

(2) Achievement of restoration. Achievement of restoration shall be determined using one of the following methods:

(A) When all sample measurements from groundwater samples from all baseline wells for a restoration parameter are equal to or below (or, in the case of pH, within an established range) the

restoration table value for that parameter, then restoration for that parameter will be assumed to have occurred. Complete restoration will be assumed to have occurred when the measurements from all samples from all baseline wells for all restoration parameters are equal to or below (or, in the case of pH, within an established range) each respective restoration table value; or

(B) A statistical analysis of information from groundwater samples from baseline wells proposed by the owner or operator and approved by the executive director that demonstrates that the groundwater quality is representative of the restoration table values.

(b) Mining completion. When the mining of a permit or production area is completed, the permittee shall notify the appropriate commission regional office and the executive director and shall proceed to reestablish groundwater quality in the affected permit or production [~~mine~~] area aquifers to levels consistent with the values listed in the restoration table for that permit or production [~~mine~~] area. Restoration efforts shall begin as soon as practicable but no later than 30 days after mining is completed in a particular production area. The executive director, subject to commission approval, may grant a variance from the 30-day period for good cause shown.

(c) Timetable. Aquifer restoration, [~~where appropriate~~] for each permit or production [~~mine~~] area, shall be accomplished in accordance with the timetable specified in the currently approved mine plan, unless otherwise authorized by the commission. Authorization for expansion of mining into new production areas may be contingent upon achieving restoration progress in previously mined production areas within the schedule set forth in the mine plan. The commission may amend the permit to allow an extension of the time to complete restoration after considering the following factors:

(1) - (7) (No change.)

(d) Reports. Beginning six months after the date of initiation of restoration of a permit or production area, as defined in the mine plan, the operator shall provide to the executive director semi-annual restoration progress reports until restoration is accomplished for the production [~~permit or mine~~] area. This report shall contain the following information:

(1) all analytical data generated during the previous six months;

(2) graphs of analysis for each restoration parameter for each baseline well;

(3) the volume of fluids injected and produced;

(4) the volume of fluids disposed;

(5) water level measurements for all baseline and monitor wells, and for any other wells being monitored;

(6) hydrographs for each baseline and monitor well;

(7) a potentiometric map for the area of the production area authorization, based on the most recent water level measurements; and

(8) a summary of the progress achieved towards aquifer restoration.

(e) Restoration table values achieved. When the permittee determines that constituents in the aquifer have been restored to the values in the Restoration Table, the restoration shall be demonstrated by stability sampling in accordance with subsection (f) of this section.

(f) [~~(e)~~] Stability sampling. The permittee shall obtain stability samples and complete an analysis for certain parameters listed in the restoration table from all production area baseline wells. Stability samples shall be conducted at a minimum of 30-day intervals for a minimum of three sample sets and reported to the executive director. The permittee shall notify the executive director at least two weeks in advance of sample dates to provide the opportunity for splitting samples and for selecting additional wells for sampling, if desired. To insure water quality has stabilized, a period of one calendar year [~~180 days~~] must elapse between cessation of restoration operations and the final set of stability samples. [~~The executive director shall determine within 45 days of the receipt of all sample analysis results whether or not restoration has been achieved.~~] Upon acknowledgment in writing by the executive director confirming achievement of final restoration, the permittee shall accomplish closure of the area in accordance with §331.86 of this title (relating to Closure).

(g) [~~(f)~~] Amendment of restoration table values. [~~Restoration table values not achieved.~~] After an appropriate effort has been made to achieve restoration to levels consistent with values listed in the restoration table for a production area, the permittee may cease restoration operations, reduce bleed and request that the restoration table be amended. With the request for amendment, the permittee shall submit the results of three consecutive sample sets taken at a minimum of 30-day intervals from all production area baseline wells used in determining the restoration table to verify current water quality. Stabilization sampling may commence 60 days after cessation of restoration operations. The permittee shall notify the executive director of his or her intent to cease restoration operations and reduce the bleed 30 days prior to implementing these steps. The permittee shall submit an application for an amendment to the restoration table within 120 days of receipt of authorization from the executive director to cease restoration operations and reduce the bleed.

(1) In determining whether the restoration table should be amended, the commission will consider the following items addressed in the request:

(A) uses for which the groundwater in the production area was suitable at baseline water quality levels;

(B) actual existing use of groundwater in the production area prior to and during mining;

(C) potential future use of groundwater of baseline quality and of proposed restoration quality;

(D) the effort made by the permittee to restore the groundwater to baseline;

(E) technology available to restore groundwater for particular parameters;

(F) the ability of existing technology to restore groundwater to baseline quality in the area under consideration;

(G) the cost of further restoration efforts;

(H) the consumption of groundwater resources during further restoration; and

(I) the harmful effects of levels of particular parameter.

(2) The commission may amend the restoration table if it finds that:

(A) reasonable restoration efforts have been undertaken, giving consideration to the factors listed in paragraph (1) of this subsection;

(B) the values for the parameters describing water quality have stabilized for a period of one year [~~180 days~~];

(C) the formation water present in the exempted portion of the aquifer would be suitable for any use to which it was reasonably suited prior to mining; and

(D) further restoration efforts would consume energy, water, or other natural resources of the state without providing a corresponding benefit to the state.

(3) If the restoration table is amended, restoration sampling shall commence and proceed as described in subsection (f) [~~(e)~~] of this section, except the stability period shall be for a period of two years unless the owner or operator can demonstrate through modeling or other means that a period of less than two years is appropriate for a demonstration of stability.

(4) If the request for an amendment of the restoration table values is not granted, the permittee shall restart restoration efforts.

§331.108. Independent Third-Party Experts.

(a) If requested by an applicant for a production area authorization submitted after September 1, 2007, the executive director may use the recommendations from an independent third-party expert regarding the initial establishment of requirements pertaining to monitoring wells for any area covered by the application, provided:

(1) the expert meets the qualifications in subsection (b) of this section;

(2) the applicant for the production area authorization pays the cost of the work of the expert;

(3) the applicant for the production area authorization is not involved in the selection of the expert or the direction of the work by the expert;

(4) the recommendations of the independent third-party expert, in the opinion of the executive director, meet all applicable statutory and regulatory requirements for monitoring wells authorized under a production area authorization; and

(5) the recommendations of the independent third-party expert, in the opinion of the executive director, are necessary for the protection of underground sources of drinking water or fresh water.

(b) In order to be considered for designation as an independent third-party expert, a person must be either a licensed professional engineer currently authorized to practice engineering in the State of Texas (unless exempted under the Texas Occupations Code, Chapter 1001, Subchapter B), or a licensed professional geoscientist currently authorized to practice geoscience in the State of Texas (unless exempted under Texas Occupations Code, §1002.252). In determining whether to designate a person as an independent third-party expert, the executive director also will consider the following:

(1) the person's work experience in geology and hydrogeology, in particular the person's experience in the area of the proposed in situ mining operation;

(2) the person's work experience related to in situ mining of uranium;

(3) the person's current and previous work experience with the applicant;

(4) the person's current and previous work experience with persons or entities that are in opposition to in situ uranium mining; and

(5) any other factors that may be relevant to determine the person's objectivity regarding their function as an independent third-party expert.

(c) The executive director will not designate an independent third party expert for the purposes of subsection (a) of this section unless requested to do so in writing by the applicant.

(d) If the executive director determines that the recommendations from the designated independent third-party expert meet the requirements for the initial establishment of monitor wells in accordance with §331.103 of this title (relating to Production Area Monitor Wells), those recommendations will be incorporated into the production area authorization, and, in accordance with §55.201(i)(11)(B) of this title (relating to Requests for Reconsideration or Contested Case Hearing), in regards to the initial establishment of monitoring wells for the area covered by the requested authorization, no opportunity for a contested case hearing will exist.

(e) If the executive director determines that the recommendations from the designated independent third-party expert do not meet the requirements for the initial establishment of monitor wells in accordance §331.103 of this title, either in whole or in part, the application for a production area authorization will be subject to opportunity for contested case hearing, regardless of subsequent changes to the application.

(f) Any person may request to be considered an independent third-party expert under this section by submitting information to the executive director to demonstrate qualifications under this section.

(g) The use of an independent third-party expert qualified and approved under this section does not constitute the applicant's selection of the expert under subsection (a)(3) of this section.

(h) A person providing an independent third-party recommendation under this section shall not be an employee of the commission.

§331.109. Cost Estimates for Financial Assurance.

(a) Each production area authorization must establish the amount of financial assurance for aquifer restoration of the production area based upon cost estimates provided under §331.143 of this title (relating to Cost Estimate for Plugging and Abandonment and Aquifer Restoration) approved by the executive director.

(b) Each area permit or production area authorization must establish the amount of financial assurance for plugging and abandonment of the injection wells, production wells, recovery wells, monitor wells, and baseline wells of the permit area or production area based upon cost estimates provided under §331.143 of this title approved by the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER I. FINANCIAL RESPONSIBILITY

30 TAC §331.143

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary

to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed amendment implements Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§331.143. Cost Estimate for Plugging and Abandonment and Aquifer Restoration.

(a) The owner or operator must prepare a written estimate, in current dollars, of the cost of: [~~plugging the well in accordance with the plugging and abandonment plan as specified in this chapter. The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.~~]

(1) plugging the well(s) in accordance with the plugging and abandonment plan as specified in this chapter; and

(2) aquifer restoration for each production area authorization.

(b) Cost Estimates.

(1) The cost estimates required under subsection (a)(1) of this section must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

(2) The cost estimate required under subsection (a)(2) of this section must equal the cost of aquifer restoration at the point in the facility's operating life when the extent and manner of its operation would make aquifer restoration most expensive.

(c) [~~(b)~~] During the operating life of the facility, the owner or operator must keep at the facility the latest cost estimates for plugging and abandonment and for aquifer restoration [~~cost estimate~~] prepared in accordance with subsection (a) of this section.

(d) On or before December 31st of each year, the owner or operator shall review and update as necessary the written estimate of the cost of plugging all wells to account for changes in costs exclusive of the inflation adjustment required under §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates). This update shall be submitted to the executive director no later than January 31st of each year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. REQUIREMENTS FOR EXISTING WELLS USED FOR DEVELOPMENT OF CLASS III UIC WELL APPLICATIONS

30 TAC §§331.220 - 331.225

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also proposed under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The proposed new sections implement Senate Bill 1604 and House Bill 3838, 80th Legislature, 2007; and TWC, §27.023 and §27.0513.

§331.220. Applicability.

The requirements of this subchapter apply to wells used to obtain information for the development of an application for a Class III injection well area permit for in situ mining of uranium.

§331.221. Registration of Wells.

(a) All wells described in §331.220 of this title (relating to Applicability) that are completed prior to submission of an application for a Class III injection well area permit must be registered within 30 days of completion and prior to submission of such an application. All wells described in §331.220 of this title that are completed after submission of such an application must be registered within 30 days of well completion.

(b) Registration of wells described in §331.220 of this title shall be completed on forms provided by the executive director. The owner or operator of any well to be registered shall provide the following information for each well:

(1) a unique, site-specific, designation for the well;

(2) the location of the well on a map;

(3) latitude and longitude of the well, with datum specified;

(4) the depth of the well;

(5) construction, completion and casing information on the well;

(6) the identification of the operator of the well;

(7) the identification of the landowner for the property on which the well is located;

(8) water level data; and

(9) identification of the groundwater conservation district in which the well is located, if applicable.

(c) The owner or operator of a well registered under this subchapter must maintain mechanical integrity of the well. A well registered under this subchapter shall be cased and cemented so as to not cause or allow the movement of fluid that would result in the pollution of an underground source of drinking water or fresh water. No injection may be authorized into a well registered under this subchapter.

(d) Any well, registered in accordance with the requirements of this subchapter, that is not subsequently authorized under a Class III

injection well area permit in accordance with §331.222 of this title (relating to Conversion of Registered Wells to Class III Wells) shall, immediately upon permit issuance, be plugged and abandoned in a manner that prohibits the movement of fluids into underground sources of drinking water or fresh water. Within 30 days of completion of plugging and abandonment, the owner or operator shall submit a certification to the executive director that the well has been plugged and abandoned in accordance with the requirements of this subsection.

(e) The registration of a well under this subchapter is not subject to the commission permitting, public notice, and hearing requirements, until such time as it is converted to a Class III well in accordance with §331.222 of this title.

§331.222. Conversion of Registered Wells to Class III Wells.

If a well registered under this subchapter is authorized under a Class III injection well area permit, the registration status for the well ceases and the well is subject to all applicable commission rules, including those regarding permitting, public notice, and hearing requirements. At such time a registered well is authorized under a Class III injection well area permit, the permittee shall submit a request to the executive director that the well be removed from the list of registered wells.

§331.223. Sharing of Data.

(a) After a person developing an application for a Class III injection well area permit has identified a permit boundary, that person shall determine if the permit boundary is within the area of a groundwater conservation district. If the proposed permit boundary is within the area of a groundwater conservation district, either wholly or in part, the person shall provide to the district:

(1) information regarding wells not recorded in the public record when such wells are encountered by that person during the development of the permit application. Information to be provided to the groundwater conservation district shall include the location and ownership of the well, and any other available information for the well, including but not limited to depth, completion method, completion interval, water quality information, and lift method;

(2) a map with the locations of all wells that are recorded in the public record and that are inside the proposed permit area and within one-quarter mile of the proposed permit area;

(3) pre-mining water quality information collected from wells registered in accordance with §331.221 of this title (relating to Registration of Wells);

(4) the amount of water produced each month from each registered well; and

(5) a record of strata as described in §331.224 of this title (relating to Record of Strata) for each registered well, except for information considered confidential in accordance with Natural Resource Code, §131.048.

(b) After receipt of the final information described by subsection (a) of this section to perform standard quality and assurance procedures, the owner or operator of a registered well may not take more than 90 days to submit the information to the groundwater conservation district.

§331.224. Record of Strata.

The executive director may require a person receiving a Class III well permit or production area authorization to maintain and provide, upon request, complete and accurate records of the depth, thickness, and character of the strata penetrated in drilling an injection well, monitoring well, or production well.

§331.225. Geophysical or Drilling Log.

If an existing well is to be converted to an injection well, monitoring well, or production well, the commission may require the applicant to provide a geophysical log or a drilling log of the existing well.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (commission) proposes amendments to §§336.1, 336.101, 336.103, 336.105, 336.107, 336.1105, 336.1109, 336.1113, 336.1125, and 336.1235. The commission also proposes new §§336.114, 336.208, 336.210, 336.1301, 336.1303, 336.1305, 336.1307, 336.1309, 336.1311, 336.1313, 336.1315, and 336.1317.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The changes proposed to this chapter are part of a larger proposal to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), and House Bill (HB) 3838, 80th Legislature, 2007, and HB 1567, 78th Legislature, 2003. This proposed rulemaking intends to incorporate new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial qualification review revisions, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting and licensing of in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application and the license application. HB 1567 requires the commission to adopt rules that establish fees for the disposal of low-level radioactive waste pursuant to the Texas Low-Level Radioactive Waste Disposal Compact. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The proposed amendments to Chapter 336 establish the qualifications and duties of the radiation safety officer (RSO) and establish requirements for emergency plans for responding to releases, establish application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive

waste, and clarify requirements that apply to source material recovery and by-product disposal.

The commission encourages the submission of public comments, data, views, and arguments on these proposed rules from all interested persons. The commission encourages comments on new Subchapter N establishing rates to be charged for low-level radioactive waste disposal fees including methods for determining revenues, reasonable rate of return, and capital investments which are the pertinent issues in establishing a rate under THSC, §401.246. The commission also seeks comments regarding a contested case hearing before the State Office of Administrative Hearings to provide a proposal for decision to be used by the commission to establish the maximum disposal rates by rule, including comments on whether there should be an opportunity for a contested case hearing. The commission recognizes that the final rule may incorporate public comment that is a logical outgrowth of the published provisions.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 55, 305, and 331.

SECTION BY SECTION DISCUSSION

The commission proposes an amendment to §336.1 to correct typographical errors.

The commission proposes an amendment to §336.101(a) to include fees for commercial disposal of radioactive material, including fees for compact waste disposal as provided in THSC, §401.245. The commission also proposes to amend §336.101(b)(2) to spell out the acronym CFR.

The commission proposes revisions to establish various application fees for amendment and renewal of licenses under Chapter 336. The current rules do not address the applicable fee for all types of applications under Chapter 336. Under THSC, §401.301 and §401.412, the commission may assess and collect a fee for each application in an amount sufficient to recover reasonable costs to administer its authority under THSC, Chapter 401.

The commission proposes §336.103(d) to establish an application fee of $50,000 for a major amendment of a license issued under Chapter 336, Subchapter H, Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer a major amendment of a license under Subchapter H.

The commission proposes §336.103(e) to establish an application fee of $300,000 for renewal of a license issued under Subchapter H. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer the renewal of a license under Subchapter H.

The commission proposes §336.103(f) to implement THSC, §401.2445, which requires a compact waste disposal facility license holder to remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payments should be made within 30 days of the end of each quarter.

The commission proposes §336.103(g) to implement THSC, §401.244, which requires compact waste disposal facility license holder to remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility.

The commission proposes an amendment to §336.105(c) to establish an application fee of $10,000 for major amendment of a license issued under Chapter 336, Subchapter L, Licensing of Source Material Recovery and By-Product Material Disposal Facilities, and Subchapter M, Licensing of Radioactive Substances Processing and Storage Facilities. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer a major amendment of a license under Subchapter L.

The commission proposes an amendment to §336.105(d) to establish an application fee of $35,000 for renewal of a license issued under Subchapters L and M. The executive director of the commission determined that this application fee amount was sufficient to recover the cost to administer the renewal of a license under Subchapters L and M.

The commission proposes an amendment to §336.105(e) to reference the applicable fee schedules for holders of licenses issued under Subchapters L and M, upon permanent cessation of all disposal activities and approval of the final decommissioning plan. The executive director of the commission determined that the current applicable fee schedules were appropriate for those licenses under Subchapters L and M to recover the administrative cost.

The commission proposes an amendment to §336.105(f) to implement THSC, §401.301(f) to provide for cost recovery for any application for a license issued under Chapter 336.

The commission proposes §336.105(h) to provide an additional 5% annual fee assessed under §336.105(b) to be deposited to the perpetual care account. This provision is proposed to implement THSC, §401.301(d).

The commission proposes §336.105(i) to implement THSC, §401.271(1), which requires the holder of a license authorizing disposal of a radioactive substance from other persons to remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. The Comptroller's office requested the commission collect the 5% of the holder's gross receipts and deposit it into the General Revenue account.

The commission proposes §336.105(j) to implement THSC, §401.271(2), which requires the holder of a license authorizing disposal of a radioactive substance from other persons to remit directly to the host county 5% of the gross receipts. The remission to the host county under this subsection does not apply to disposal of low-level radioactive waste, neither compact waste nor federal facility waste.

The commission proposes an amendment to §336.107(a) to require that payment for fees shall be due on or before October 31st of each year. Section 336.107(b) is proposed to be amended to provide that annual fees may be prorated for a period less than 12 months to accommodate the due date established in §336.107(a).

The commission proposes new §336.114 to implement THSC, §401.302, which requires an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

The commission proposes new §336.208 to include language for RSO qualifications and duties. This language is copied directly over from 25 TAC §289.202 and was inadvertently left out in the Phase I Rulemaking (Rule Project Number 2007-028-336-PR).

The commission proposes new §336.210 to include language for emergency plans. This language is copied directly over from 25 TAC §289.202 and was inadvertently left out in the Phase I Rulemaking.

The commission proposes an amendment to §336.1105 to clarify the definitions of "Surface Impoundments" and "Uranium Recovery"; adding definitions for "By-Product Material Disposal Cell," "By-Product Material Pond," "In situ leach," and "In situ recovery"; modifying and adding language to the definition of "Operation"; and adding definitions for "Reclamation" and "Restoration." These changes are made in an effort to clearly differentiate between conventional and in situ uranium recovery and to clarify reclamation and restoration which are decommissioning activities.

The commission proposes an amendment to §336.1109 to eliminate the language for RSO qualifications and refer to §336.208 for that information. This allows the consolidation of RSO requirements to one section in the regulations.

The commission proposes an amendment to §336.1113 by adding new paragraph (4) to require submission of written reports after certain spills or releases. This change ensures that the licensee reports on a spill and includes information about location, cause, corrective steps, and schedule for remediation.

The commission proposes an amendment to §336.1125 by replacing the terms "financial security" to "financial assurance," and "security arrangements" to "financial assurance mechanism." These proposed changes would ensure that they are consistent with the terminology used in Chapter 37, Financial Assurance. The commission also proposes an amendment to §336.1125 by adding the phrase, "injection of mining fluid into a production area" to the actions that are prohibited before the establishment of financial assurance mechanism and adding language that would require the licensee or applicant to calculate restoration financial assurance amount using certain data. This proposed change would ensure against possibly unsecured contamination events and ensuring that the licensee uses the correct data when calculating financial security for restoration.

The commission proposes §336.1125(d) - (i) to establish requirements for financial assurance, implementing the Texas Department of State Health Services' (Department) provisions in 25 TAC §289.260(m). The commission proposes these new subsections to provide that financial assurance mechanisms submitted to comply with the requirements of Subchapter L must meet the requirements of Chapter 37, Subchapter T. The commission's financial assurance requirements are consolidated in Chapter 37 and establish specific requirements for the type of financial assurance mechanisms and the wording for specific financial assurance instruments. Proposed subsection (i) provides that existing licenses must submit new financial assurance mechanisms to comply with the requirements of Subchapter L and the requirements of Chapter 37, Subchapter T by June 1, 2009. The commission believes that this provides a suitable amount of time for licensees to make arrangements for submission of financial assurance mechanisms that are in compliance with commission requirements.

The commission proposes an amendment to §336.1235 to establish financial assurance requirements for facilities licensed under Subchapter M. Decommissioning and financial assurance for facilities licensed under Subchapter M are required under the provisions of Chapter 336, Subchapter G, Decommissioning Standards. Financial assurance mechanisms must be provided in accordance with Chapter 37, Subchapter T, Financial Assurance for Radioactive Substances and Aquifer Restoration. New licenses must provide acceptable financial assurance 60 days prior to receipt or possession of radioactive substances. Existing licensees authorized by the Department must submit new financial assurance mechanisms in favor of the commission by June 1, 2009. In addition, once financial assurance is established, a licensee must provide a cost estimate report annually to allow review of cost estimates for decommissioning and submit additional financial assurance to reflect any increase in the cost estimate.

The commission proposes new Subchapter N to establish fees for low-level radioactive waste disposal. The primary purpose of the proposed rulemaking is to implement HB 1567, 78th Legislature, 2003, SB 1604, 80th Legislature, 2007, and its amendments to THSC, Chapter 401, also known as the Texas Radiation Control Act.

The commission proposes new §336.1301 to establish the procedures the commission will use to determine the rates charged by the Texas Low-Level Radioactive Waste Disposal Compact.

The commission proposes new §336.1303 to establish definitions for Subchapter N. Section 336.1303 implements THSC, §401.246(b). The following definitions are consistent with the terms used by the Public Utility Commission of Texas under Texas Utilities Code, §§36.051, 36.052, and 36.053: capital investment, compact, compact waste, compact waste disposal facility, extraordinary volume, extraordinary volume adjustment, generator, gross receipts, inflation adjustment, licensee, maximum disposal rate, reasonable rate of return, relative hazard, revenue requirement, and volume adjustment.

The commission proposes new §336.1305 to implement the commission's jurisdiction to establish rates charged by the compact waste disposal license holder in accordance with THSC, §401.245(b).

The commission proposes new §336.1305(a) to provide that in establishing the rates, the commission ensures they are fair, just, reasonable, and sufficient. This provision is proposed to comply with THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1305(b) to provide methods by which the commission may arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. This provision is proposed to implement THSC, §401.246(b).

The commission proposes new §336.1305(c) to provide that the commission may refer a request for a contested case hearing to the State Office Administrative Hearings on the establishment of a rate under Subchapter N. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(d) to provide that the commission holds audit authority over the licensee in pursuant to THSC, §401.272.

The commission proposes new §336.1305(e) to provide that the commission shall establish, by rule, the maximum disposal rate and schedule. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(f) to provide that the commission may delegate the authority to establish the rate under Subchapter N to the executive director if the application is not contested. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1305(g) to provide that the executive director may initiate revision to the maximum disposal rate when there is good cause, subject to notice and opportunity for a contested case hearing. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1307, which provides the commission to adopt a maximum disposal rate based on certain factors and ensure that the maximum disposal rate is sufficient to cover certain factors. This provision is proposed to implement THSC, §401.246.

The commission proposes new §336.1307(1), which the maximum disposal rate be sufficient to allow the licensee to recover the operating and maintaining the compact waste disposal facility with a reasonable profit. This provision is proposed to implement THSC, §401.246(a)(1).

The commission proposes new §336.1307(2), which the maximum disposal rate is sufficient to provide for the future costs of decommissioning, closing, and post-closure maintenance and surveillance of the facility. This provision is proposed to implement THSC, §401.246(a)(2).

The commission proposes new §336.1307(3) establishing the maximum disposal rate is sufficient to provide for an amount to fund local public projects as required under THSC, §401.244. This provision is proposed to implement THSC, §401.246(a)(3).

The commission proposes new §336.1307(4) establishing the maximum disposal rate is sufficient to provide for a reasonable rate of return on capital investment in the compact waste disposal facility. This provision is proposed to implement THSC, §401.246(a)(4).

The commission proposes new §336.1307(5) establishing the maximum disposal rate is sufficient to provide for an amount necessary to pay all the fees required by rule or statute, financial assurance for the facility, and reimburse the commission for the resident inspectors as required under THSC, §401.206. This provision is proposed to implement THSC, §401.246(a)(5).

The commission proposes new §336.1309 to establish the procedures for filing a rate application package by the licensee. The commission proposes new §336.1309(a) to provide that the licensee shall file an application with the commission to establish an initial maximum disposal rate. The application for the initial maximum disposal rate will include all the required documents, and the licensee's revenue requirements. The application will consider all five factors as specified in §336.1307. This provision is proposed to implement THSC, §401.245.

The commission proposes §336.1309(a)(1) to provide that the licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(a)(2) to provide that the executive director shall review the application and recommend a maximum disposal rate to the commission for approval. It will also allow the executive director to request additional information during review process. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(a)(3) which provides the licensee shall notify all known customers that will ship or deliver waste to the facility that will submit an application for the initial maximum disposal rate. The notice will be provided by any method directed by the executive director. The executive director shall maintain a website available to the public to monitor the status of the application. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(b) to provide that the commission will establish the initial maximum disposal rate after the notices in §336.1309(c) of this section and the opportunity for a contested case hearing have been made. This will ensure that the generators and those affected by this subchapter are given an opportunity to request for a contested case hearing from the commission. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1309(c), which provides the commission shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1311 to establish the procedures for determining maximum disposal rates to comply with THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(a), which provides the procedure for determining the maximum disposal rates that a licensee may charge generators. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(b), which establishes that initially, the maximum disposal rate shall be the initial rates established pursuant to §336.1304. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(c), which provides the maximum disposal rates shall be adjusted in January of each year. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(d), which establishes procedures for the licensee to file for revisions to the maximum disposal rates. This provision is proposed to implement THSC, §§401.245, 401.246 and 401.247 and to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1311(e), which establishes that an application for revisions to the maximum disposal rate must comply with the requirements of §336.1309(a) of Subchapter N. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1311(f), which establishes that a licensee must provide notice to its customers concurrent with the filing of an application for revisions to the maximum disposal rate, including inflation and volume adjustments. This provision is proposed to implement THSC, §401.245.

The commission proposes new §336.1313 to establish the procedures for determining an extraordinary volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1313(a) to provide a method for establishing the extraordinary volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1313(b) to provide a method for subsequent calculation of the volume adjustment. This provision is proposed to implement THSC, §401.245(b) and (c).

The commission proposes new §336.1315 to establish the procedures for revenue statements and fees to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1315(a) for the licensee of a compact waste facility to file the audited financial statement showing its gross operating revenue for the preceding calendar year for determination of the waste disposal fee. The executive director of the commission determined that the audited financial statement showing its gross operating revenue is required to calculate the waste disposal fee as described in THSC, §401.246(a). The licensee shall also include a validation of payments made in §336.103(f) and (g) of Subchapter B. This provision is proposed to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1315(b) to establish what is an acceptable form of audited financial statement. It must be prepared in accordance with Generally Acceptable Accounting Principles (GAAP) and audited by a Certified Public Accounting (CPA) firm. The licensee will also include the Auditor's Report from the CPA indicating an "unqualified" opinion of the licensee's financial statements. This provision is proposed to implement THSC, §§401.245, 401.246, and 401.247.

The commission proposes new §336.1317 to establish the procedures for determining contracted disposal rates. This provision is proposed to implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1319(a) to allow the licensee to contract with any person to provide a contract disposal rate that is lower than the maximum disposal rate. This provision is proposed to implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

The commission proposes new §336.1319(b) to provide a mechanism for commission approval of a contract or contract amendment. This provision is proposed to implement THSC, §401.246(b) to be consistent with the process used by the Public Utility Commission of Texas under the Texas Utilities Code, §§36.051, 36.052, and 36.053.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and other units of state and local government due to administration or enforcement of the proposed changes to the Chapter 336 rules. Fiscal implications are also anticipated for regulated entities as a result of the administration or enforcement of the proposed rule revisions.

The primary purpose of the proposed rules is to implement SB 1604, 80th Legislature, 2007. SB 1604 transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Texas Department of State Health Services (DSHS or Department) to the commission.

This rulemaking effort is the second in a series to implement SB 1604 relating to transfer of certain regulatory responsibilities for radioactive waste from the Department to the TCEQ. Prior to SB 1604, DSHS had responsibility for the regulation and oversight of commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal (disposal of uranium mine and mill tailings and waste) while the TCEQ regulated all other radioactive waste disposal (low-level radioactive waste and non-oil and gas naturally-occurring radioactive material).

SB 1604 also addresses the process for review of an application for a by-product disposal facility proposed for Andrews County. In addition, SB 1604 addresses the underground injection control program for regulation of in situ uranium mining, and a new state fee for the disposal of radioactive waste other than low-level radioactive waste. This phase also includes rulemaking to implement the provisions on well registration in HB 3838, 80th Legislature, as well as other considerations.

The legislature provided TCEQ $200,000 plus the unexpended and un-obligated portions of the appropriations for the state fiscal biennium beginning September 1, 2005, made to the DSHS for activities related to the transfer. Legislative appropriations for fiscal year 2008 and fiscal year 2009 relating to the regulation of radioactive substances, estimated to be $988,771 in fiscal year 2008 and $897,931 in fiscal year 2009 out of the General Revenue Fund, and associated Full-Time-Equivalent Positions (estimated to be 11.0) were to be transferred from the DSHS to the TCEQ. In addition to these amounts, the TCEQ was also appropriated out of the Waste Management Account Number 549 in Strategy A.2.3, Waste Management and Permitting, $471,388 in fiscal year 2008 and $460,728 in fiscal year 2009, to be used for the regulation of radioactive substances. This funding was to come from additional fee revenue the agency would be collecting for administering these new responsibilities.

The proposed amendments to Chapter 336 establish the qualifications and duties of the RSO and radiation safety committee, establish requirements for emergency plans for responding to releases, establish application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive waste, and clarify requirements that apply to source material recovery and by-product disposal.

The proposed amendments will result in additional fee revenue for the agency. The proposed rules will add fee provisions for license renewals and major amendment applications of radioactive material licenses to reflect the cost of reviewing and processing licensing action requests. Renewals for licenses for near-surface land disposal of low-level radioactive waste under Chapter 336, Subchapter H will increase to $300,000 for the application fee and $50,000 for major amendments. Renewals for licenses of uranium recovery and by-product material disposal facilities under Chapter 336, Subchapter L, and radioactive sub-

stances processing and storage facilities under Chapter 336, Subchapter M, will increase to $35,000 for the application fee with major amendments increasing to $10,000 per application. In addition, for any application submitted under the authority of Chapter 336, the commission would be allowed to assess and collect additional fees from the applicant to recover costs. It is not known how many existing entities will request major amendments to their licenses. Licenses must be renewed on a ten-year cycle and at this time it is not known how many licensees will renew over the next five years, so revenue estimates are not available at this time.

Next, the proposed rules would allow the commission to assess and collect an annual fee from the operator of a nuclear reactor for actual expenses that arise from emergency planning and environmental surveillance activities. These fees will come from the two nuclear power plants in the state (South Texas and Comanche Peak) and are estimated to be less than $5,000 per facility per year.

The proposed rules would include other fee provisions. Five percent of the gross receipts from compact waste received at the compact waste disposal facility, from any federal facility waste received at the federal facility waste disposal facility, and from a license holder authorized for the disposal of radioactive substances from other persons would be deposited into the General Revenue Fund. These funds would not go to the agency.

The proposed rules would provide that 5% of annual fees assessed for licenses issued under Chapter 336, Subchapters F, G, and K - M be deposited to the Perpetual Care Account. Money and security in this account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment. Based upon the amount of annual fees received last year, revenue to the account is estimated to be approximately $35,000 each year.

The proposed rules also provide for the remittance to the host county 5% of the gross receipts from compact waste received at a compact waste disposal facility, from any federal facility waste received at the federal facility waste disposal facility and license holders authorized for the disposal of radioactive substances from other persons. At this time, one county (Andrews) is expected to be affected by this provision. Revenue estimates to the county are not available at this time.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased efficiency of the regulation of radioactive substance processing, storage and disposal through consolidation of these activities at one state agency.

The proposed rules will affect companies seeking licenses and permits from the TCEQ for source material recovery (uranium mining), and for storage, processing, and/or disposal of radioactive material. Program staff estimates that less than twenty source material recovery companies could be affected and that less than five radioactive material storage, processing, and disposal companies could be impacted.

Renewals for licenses for near-surface land disposal of low-level radioactive waste under Chapter 336, Subchapter H will increase to $300,000 for the application fee and $50,000 for major amendments. Renewals for licenses of uranium recovery and by-product material disposal facilities under Chapter 336, Subchapter L, and radioactive substances processing and storage facilities under Chapter 336, Subchapter M, will increase to $35,000 for the application fee with major amendments increasing to $10,000 per application. In addition, for any application submitted under the authority of Chapter 336, the commission would be allowed to assess and collect additional fees from the applicant to recover costs. It is not known how many existing entities will request major amendments to their licenses or how many licensees will choose to renew their licenses over the next five years.

The two nuclear power plants (South Texas and Comanche Peak) in the state will be assessed fees for actual expenses that arise from emergency planning and environmental surveillance activities. These are estimated to be less than $5,000 per facility per year.

The proposed rules allow the commission to establish rates to be charged by the compact waste disposal facility license holder in disposing of Compact Low-Level Radioactive Waste. The proposed rules require the commission to assure that they are fair, just, reasonable, and sufficient considering the value of the licensee's leasehold and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

In general, no adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Nuclear Sources and Services Inc. is a radioactive waste storage and processing enterprise which may be a small business. The proposed fee changes would affect them if they seek an amendment to their current license ($10,000). The proposed changes will also affect them when the ten-year renewal period is up for the current license and if they seek a renewal ($35,000), but overall these fee increases are not anticipated to be significant.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and the proposed rules are required by SB 1604.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission proposes the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in

a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking action amends Chapter 336 for the regulation of radioactive materials. The proposed rulemaking to Chapter 336 would establish the qualifications and duties of the RSO and radiation safety committee, establish requirements for emergency plans for responding to releases, establish application fees for radioactive materials licenses, establish fees for the disposal of low-level radioactive waste, and clarify requirements that apply to source material recovery and by-product disposal. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules for the RSO, radiation safety committee, and emergency plans are requirements that already applied to the licensing programs at the DSHS, but were inadvertently omitted from the rules transferred from the department during the Phase 1 rulemaking implementing SB 1604. Additional amendments clarify requirements in Subchapter L that apply to source material recovery or by-product disposal. While these proposed rules do address application fees and waste disposal fees, the commission does not anticipate that the new fees will adversely affect in a material way the economy, productivity, competition, or jobs because costs associated with license application fees or waste disposal fees would be passed on to the various customers of the licensee or waste generators. The proposed rulemaking action also amends application requirements for these licensing programs in Chapter 305, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in Chapter 37, amends public notice requirements in Chapter 39, and amends public participation requirements in Chapter 55.

Furthermore, the proposed rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The proposed rules are compatible with federal law.

The proposed rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements, including requirements for fees, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. THSC, §401.245 requires the commission to adopt compact waste disposal fees by rule. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 1604 and HB 1567.

The proposed rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are proposed under specific authority of the THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, 401.245, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment under the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property.

The purpose of these proposed rules is to implement changes to the TRCA required by SB 1604, 80th Legislature, 2007 and HB 1567, 78th Legislature, 2003 for the licensing of by-product material, recovery of source material, commercial radioactive substances processing and storage, and low-level radioactive waste disposal; as well as fee setting for the disposal of low-level radioactive waste The proposed rules to Chapter 336 would substantially advance this purpose by establishing the requirements for the licenses that are subject to the transfer of jurisdiction under SB 1604 or changes in HB 1567 and establishing the rate-setting process for the assessment of fees for the disposal of low-level radioactive waste under HB 1567.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules licensing and fee requirements and do not affect real property. The proposed rules would affect those who chose

to conduct licensed radioactive materials activities under Chapter 336 or those who generate and dispose low-level radioactive. Therefore, the proposed rules do not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on September 16, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-029-336-PR. The comment period closes October 6, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Susan Jablonski, Director, Radioactive Materials Division, (512) 239-6466.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances; all persons who recover or process source material; and all persons who receive radioactive substances from other persons for storage or processing.

(1) (No change.)

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter (relating to Radioactive Substance Fees), to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) - (D) (No change.)

(3) - (5) (No change.)

(b) - (e) (No change.)

(f) No person shall:

(1) - (2) (No change.)

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2,000 picocuries (pCi/g) [~~2000 pCi/g~~] radium-226 or radium-228;

(4) - (7) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §§336.101, 336.103, 336.105, 336.107, 336.114

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new section are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments and new section implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§336.101. Purpose and Scope.

(a) This subchapter establishes fees for licensing, commercial disposal, emergency response activities including training, and other regulatory services and provides for their payment.

(b) Except as otherwise specifically provided, this subchapter applies to any person who is:

(1) (No change.)

(2) the holder of a fixed nuclear facility construction permit or operating license issued by the United States Nuclear Regulatory Commission under 10 Code of Federal Regulations [~~CFR~~] Part 50 (Domestic Licensing of Production and Utilization Facilities); or

(3) (No change.)

§336.103. Schedule of Fees for Subchapter H Licenses.

(a) An application for a low-level radioactive waste disposal site license under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be accompanied by a nonrefundable application processing fee of $500,000. If the commission's costs in processing an application under Subchapter H of this chapter [~~(relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste)~~] exceed the $500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

(b) - (c) (No change.)

(d) An application for a major amendment of a license issued under Subchapter H of this chapter must be accompanied by an application fee of $50,000.

(e) An application for renewal of a license issued under Subchapter H of this chapter must be accompanied by an application fee of $300,000.

(f) The compact waste disposal facility license holder shall remit to the commission 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

(g) The compact waste disposal facility license holder shall remit directly to the host county 5% of the gross receipts from compact waste received at the compact waste disposal facility and any federal facility waste received at the federal facility waste disposal facility as required in Texas Health and Safety Code, §401.244. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August.

§336.105. Schedule of Fees for Other Licenses.

(a) - (b) (No change.)

(c) An application for a major amendment of a license issued under Subchapter F, Subchapter G, [~~or~~] Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F, Subchapter G, [~~or~~] Subchapter K, Subchapter L, or Subchapter M of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, [~~or~~] Subchapter K, Subchapter L, or Subchapter M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, [~~an application to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007,~~] the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

(h) The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section. The fee is non-refundable and will be deposited to the perpetual care account.

(i) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license. Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(j) The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

§336.107. Annual License Fee Due Date and Period Covered.

(a) Payment for annual fees set forth in §336.105(b) of this title (relating to Schedule of Fees for Other Licenses) shall be due on or before October 31st of each year [~~in full each year on or before the last day of the expiration month of the license. As an example, if the license expires on May 31, 1999, annual fees are due on or before May 31 of each year~~].

(b) The period covered by each annual fee set forth in §336.105(b) of this title shall be the 12 months preceding the fee payment due date, except fees may be prorated for a period less than 12 months to accommodate the due date established in subsection (a) of this section.

§336.114. Fee for Fixed Nuclear Facilities.

The commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material. The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.208, §336.210

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed new sections implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§336.208. Radiation Safety Officer.

(a) Qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested and include as a minimum:

(1) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;

(2) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the RSO at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and

(3) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency.

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) to establish and oversee operating, safety, emergency, and as low as reasonably achievable procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(2) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(3) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(4) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §336.405 of this title (relating to Notifications and Reports to Individuals);

(5) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(6) to investigate and cause a report to be submitted to the executive director for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(7) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(8) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(9) to ensure that records are maintained as required by this chapter;

(10) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(11) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(12) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to, the following:

(A) isotope(s);

(B) quantity(ies);

(C) radioactivity(ies); and

(D) date inventory is performed.

(13) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(14) to serve as the primary contact with the agency.

§336.210. Emergency Plan for Responding to a Release.

(a) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (e) of this section shall contain either:

(1) an evaluation showing that the maximum dose to a person off-site due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(2) an emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted in accordance with subsection (a)(1) of this section:

(1) the radioactive material is physically separated so that only a portion could be involved in an accident;

(2) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(3) the release fraction in the respirable size range would be lower than the release fraction in subsection (e) of this section due to the chemical or physical form of the material;

(4) the solubility of the radioactive material would reduce the dose received;

(5) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (e) of this section;

(6) operating restrictions or procedures would prevent a release fraction as large as that in subsection (e) of this section; or

(7) other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted in accordance with subsection (a)(1) of this section shall include the following information.

(1) Facility description. A brief description of the licensee's facility and area near the site.

(2) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(3) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(4) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(5) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(6) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(7) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(8) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(9) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the agency.

(10) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(11) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(12) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(13) Hazardous chemicals. A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(e) The following indicates release fractions for radioactive material.

Figure: 30 TAC §336.210(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §§336.1105, 336.1109, 336.1113, 336.1125

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§336.1105. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) By-product material disposal cell--A man-made excavation and/or construction designed, sited, and built in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements) for the purpose of disposal of by-product material.

(6) By-product material pond--A man-made excavation designed, constructed, and sited in accordance with the requirements of §336.1129 of this title (relating to Technical Requirements).

(7) [~~(5)~~] Capable fault--As used in this section, "Capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(8) [~~(6)~~] Closure--The post-operational activities to decontaminate and decommission the buildings and site used to produce by-product materials and reclaim the tailings or disposal area, including groundwater restoration, if needed.

(9) [~~(7)~~] Closure plan--The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(10) [~~(8)~~] Commencement of construction--Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.

(11) [~~(9)~~] Compliance period--The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(12) [~~(10)~~] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13) [~~(11)~~] Disposal area--The area containing by-product materials to which the requirements of §336.1129(p) - (aa) of this title (relating to Technical Requirements) apply.

(14) [~~(12)~~] Existing portion--As used in §336.1129(i)(1) of this title (relating to Technical Requirements), "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium by-product materials had been placed prior to September 30, 1983.

(15) [~~(13)~~] Factors beyond the control of the licensee--Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with §336.1129(x) of this title (relating to Technical Requirements). These factors may include, but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(16) [~~(14)~~] Final radon barrier--The earthen cover (or approved alternative cover) over by-product material constructed to comply with §336.1129(p) - (aa) of this title (relating to Technical Requirements) (excluding erosion protection features).

(17) [~~(15)~~] Groundwater--Water below the land surface in a zone of saturation. For purposes of this subchapter, groundwater is the water contained within an aquifer as defined in this section.

(18) [~~(16)~~] Hazardous constituent--Subject to §336.1129(j)(5) of this title (relating to Technical Requirements), "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the by-product material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 Code of Federal Regulations Part 40, Appendix A, Criterion 13.

(19) In situ leach--Refers to the actual oxidation and dissolution of uranium in an underground formation.

(20) In situ recovery--Refers to the process of stripping, precipitating, de-watering, and drying uranium in a surface processing plant.

(21) [~~(17)~~] Leachate--Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the by-product material.

(22) [~~(18)~~] Licensed site--The area contained within the boundary of a location under the control of persons generating or storing by-product materials under a license.

(23) [~~(19)~~] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of by-product material, hazardous constituents, or leachate.

(24) [~~(20)~~] Maximum credible earthquake--That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(25) [~~(21)~~] Milestone--An action or event that is required to occur by an enforceable date.

(26) [~~(22)~~] Operation--

(A) The period of time during which a by-product material disposal area is being used for the continued placement of by-product material or is in standby status for such placement. A disposal area is in operation from the day that by-product material is first placed in it until the day final closure begins; and

(B) The period of time during which an in situ leach uranium recovery operation is actively leaching or recovering uranium.

(27) [~~(23)~~] Point of compliance--The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(28) [~~(24)~~] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed

material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(29) Reclamation--Those activities at a uranium recovery licensed facility that work towards achieving the criteria under this subchapter for release of equipment, facilities and/or the site (including land) to unrestricted use or termination of the license.

(30) [~~(25)~~] Reclamation plan--For the purposes of §336.1129(p) - (aa) of this title (relating to Technical Requirements), "reclamation plan" is the plan detailing activities to accomplish reclamation of the by-product material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, windblown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of by-product material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(31) Restoration--Those activities that seek to return the groundwater at an underground injection control permitted site to restoration levels established by permit.

(32) [~~(26)~~] Security--This term has the same meaning as financial assurance.

(33) [~~(27)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area at a conventional uranium mill, which is designed to receive waste from the milling process which may contain [~~hold an accumulation of~~] liquid wastes or wastes containing free liquids, solid wastes, mill site demolition materials and debris, and other by-product materials from the milling site [~~and which is not an injection well~~].

(34) [~~(28)~~] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(35) [~~(29)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(36) [~~(30)~~] Uranium recovery, or source material recovery--Any uranium extraction or concentration activity that results in the production of "by-product material" as it is defined in this chapter. As used in this definition, "Uranium recovery" has the same meaning as "uranium milling" in 10 Code of Federal Regulations §40.4.

§336.1109. General Requirements for the Issuance of Specific Licenses.

A license application may be approved if the agency determines that the applicant has met the requirements of §336.207 of this title (relating to General Requirements for Issuance of a License) and the following:

(1) qualifications of the designated radiation safety officer as stated in §336.208 of this title (relating to Radiation Safety Officer); and [~~(RSO) are adequate for the purpose requested in the application and include as a minimum:~~]

[~~(A) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;~~]

[~~(B) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the radiation safety officer at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and~~]

[~~(C) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency; and~~]

(2) (No change.)

§336.1113. Specific Terms and Conditions of Licenses.

Unless otherwise specified, each license issued in accordance with this section is subject to the requirements of §305.125 of this title (relating to Standard Permit Conditions) and the following.

(1) - (3) (No change.)

(4) A written report to the executive director within 30 days after learning of the occurrence of a spill as described in subparagraph (A) or (B) of this paragraph. The report shall include the following:

(A) location of the spill;

(B) cause of the spill;

(C) corrective steps taken or planned to ensure against a recurrence; and

(D) timely schedule for remediation of the spill or release, if required.

(5) [~~(4)~~] At any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked.

(6) [~~(5)~~] The licensee shall be subject to the applicable provisions of Texas Health and Safety Code, Chapter 401, also known as the Texas Radiation Control Act (TRCA) now or hereafter in effect and to applicable rules and orders of the commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to TRCA or by reason of rules and orders issued in accordance with terms of TRCA.

(7) [~~(6)~~] Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of TRCA, or because of conditions revealed by any application or statement of fact or any report, record or inspection or other means that would warrant the commission to refuse to grant a license on the original application, or for failure to operate the facility in accordance with the terms of the license, or for any violation of or failure to observe any of the terms and conditions of TRCA or the license or of any rule or order of the commission.

(8) [~~(7)~~] Each person licensed by the commission under this subchapter shall confine possession and use of radioactive materials to the locations and purposes authorized in the license.

(9) [~~(8)~~] No by-product may be disposed of until the executive director has inspected the facility and has found it to be conformance with the description, design, and construction described in the application for a by-product disposal license. No by-product may be received for disposal at the facility until the executive director has approved financial assurance.

(10) [~~(9)~~] The commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements or conditions with respect to the licensee's receipt, possession, or disposal of by-product as it deems appropriate or necessary in order to:

(A) protect the health and safety of the public and the environment; or

(B) require reports and recordkeeping and to provide for inspections of activities under the licenses that may be necessary or appropriate to effectuate the purposes of TRCA and rules thereunder.

§336.1125. Financial Assurance [~~Security~~] Requirements.

(a) Financial assurance [~~security~~] for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee 60 days prior to the receipt or possession of radioactive substances, or prior to injection of mining fluid into a production area to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any by-product material disposal areas. The amount of funds to be ensured by such financial assurance mechanism [~~security arrangements~~] shall be based on agency-approved cost estimates in an agency-approved closure plan for:

(1) (No change.)

(2) the reclamation of by-product material disposal areas in accordance with technical criteria delineated in §336.1129 of this title (relating to Technical Requirements); or [~~.~~]

(3) the aquifer restoration which is based on the physical characteristics of the mining aquifer; the costs of equipment, labor, and administration; and any other data required under Chapter 331 of this title (relating to Underground Injection Control) for a production area authorization application.

(b) (No change.)

(c) The financial assurance [~~security~~] shall also cover the payment of the charge for long-term surveillance and control for by-product material disposal areas required by §336.1127(c) of this title (relating to Long-Term Care and Maintenance Requirements).

(d) The licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work in establishing specific financial assurance mechanisms. The agency may accept financial assurance mechanisms that have been consolidated with financial or security arrangements established to meet requirements of other federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the security that covers the decommissioning and reclamation of the buildings, site, and by-product material disposal areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities. [~~A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).~~]

(e) The financial assurance mechanism shall be continuous for the term of the license and shall be payable to the State of Texas Perpetual Care Account.

(f) The licensee's financial assurance mechanism and the underlying cost estimates will be reviewed annually by the agency to assure that sufficient funds are available for completion of the decommissioning and reclamation plan if the work had to be performed by an independent contractor. The amount of financial assurance must be adjusted to recognize any increases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. A licensee must submit a cost estimate report annually for decommissioning and reclamation of the facility in accordance with the decommissioning and reclamation plans by no later than an anniversary date as determined by the executive director. The licensee must provide any increase in the amount of financial assurance within 60 days of a determination of the cost estimate by the executive director.

(g) Financial assurance mechanisms submitted to comply with this subchapter must meet the requirements specified in Chapter 37, Subchapter T of this title (relating to Financial Assurance for Radioactive Substances and Aquifer Restoration) by June 1, 2009. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of financial assurance amount as determined by the executive director shall be retained until final compliance with the reclamation plan is determined. This will yield a financial assurance mechanism that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

(h) Self-insurance, or any arrangement that essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the financial assurance requirement since this provides no additional assurance other than that which already exists through license requirements.

(i) Licensees or applicants with financial assurance mechanisms issued or submitted in accordance with the requirements of the Texas Department of State Health Services shall submit a replacement mechanism(s) to comply with this subchapter and the requirements of Chapter 37, Subchapter T of this title by June 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

30 TAC §336.1235

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radia-

tion Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements SB 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625.

§336.1235. Financial Assurance for Storage and Processing.

(a) A licensee must establish financial assurance for decommissioning and any other requirements of this subchapter 60 days prior to the possession of radioactive substances. [~~A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).~~]

(b) In establishing financial assurance, the licensee's cost estimates must take into account total costs that would incurred if an independent contractor were hired to perform the decommissioning. The amount of financial assurance must be in an amount approved by the agency.

(c) The licensee's financial assurance mechanism and the underlying cost estimates will be reviewed annually by the agency to assure that sufficient funds are available for completion of decommissioning. The amount of financial assurance must be adjusted to recognize any increases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. A licensee must submit a cost estimate report annually for decommissioning the facility in accordance with the decommissioning plan by no later than an anniversary date as determined by the executive director. The licensee must provide any increase in the amount of financial assurance within 60 days of a determination of the cost estimate by the executive director.

(d) Self-insurance, or any arrangement that essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the financial assurance requirement because this provides no additional financial assurance other than that which already exists through license requirements.

(e) In addition to the requirements of this subchapter, all licensees authorized under this subchapter and all financial assurance mechanisms submitted to comply with this subchapter are subject to requirements of Chapter 37, Subchapter T of this title (relating to Financial Assurance for Radioactive Substances and Aquifer Restoration) by June 1, 2009.

(f) Licensees with financial assurance mechanisms issued to meet the requirements of the Texas Department of State Health Services must submit a replacement mechanism(s) to comply with this subchapter and the requirements of Chapter 37, Subchapter T of this title by June 1, 2009. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of financial assurance amount as determined by the executive director shall be retained until final compliance with the reclamation plan is determined. This will yield a financial assurance mechanism that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §§336.1301, 336.1303, 336.1305, 336.1307, 336.1309, 336.1311, 336.1313, 336.1315, 336.1317

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The new sections are also proposed under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.245, concerning Compact Waste Disposal Fees; §401.246, concerning Waste Disposal Fee Criteria; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the

disposal of radioactive substances; and §401.2625, concerning Licensing Authority.

The proposed new sections implement House Bill 1567, 78th Legislature, 2003; Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.245, 401.246, 401.262, 401.412, and 401.2625.

§336.1301. Purpose and Scope.

(a) State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. Under federal law, Texas is responsible for managing the low-level radioactive waste generated within its borders. The Texas Low-Level Radioactive Waste Disposal Compact, comprised of the states of Texas and Vermont, has as its disposal facility the compact waste disposal facility licensed under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste). The compact waste disposal facility is expected to be the sole facility for disposal of low-level radioactive waste for generators within the states of Texas and Vermont.

(b) Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. For the Compact Waste Facility Disposal, the price of disposing of low-level radioactive waste at the Texas low-level radioactive waste disposal site will be determined by the commission. To protect Texas and Vermont compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, the commission will establish the maximum disposal rates charged by the licensee in accordance with the rules in this subchapter.

(c) A licensee who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, Chapter 403 shall collect a fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility for disposal. This fee shall be based on the commission approved maximum disposal rate, as specified in this subchapter.

§336.1303. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions.

(1) Capital Investment--The original cost, less depreciation, of property used by and useful to the licensee in providing service. The original cost of property shall be determined at the time the property is dedicated to public use, whether by the licensee that is the present owner or by a predecessor. In this subchapter, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

(2) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(3) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006.

(4) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(5) Extraordinary volume--Volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(6) Extraordinary volume adjustment--A mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in §336.1313 of this title (relating to Extraordinary Volume Adjustment).

(7) Generator--A person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(8) Gross Receipts--Includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage, treatment, and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract.

(9) Inflation adjustment--A mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period. The adjustment shall be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business.

(10) Licensee--The holder of the license authorizing the compact waste disposal facility license issued by the commission under this chapter.

(11) Maximum disposal rate--The rate described in §336.1311 of this title (relating to Revisions to Maximum Disposal Rates).

(12) Reasonable rate of return--The return on invested capital based on applicable factors, including:

(A) the efforts and achievements of the licensee in conserving resources;

(B) the quality of the licensee's services;

(C) the efficiency of the licensee's operations; and

(D) the quality of the licensee's management.

(13) Relative Hazard--The properties of a waste stream for disposal that may present a particular hazard or danger for safe management based on the radioactivity in curies and dose rate as well as special handling requirements due to size, shape, or configuration.

(14) Revenue Requirement--Based on a formula which is the capital investment multiplied by the rate of return on capital investment, plus the allowable operating and maintenance cost including other operating cost, closure cost and fees, where all amounts are only those used and useful for the compact facility.

(15) Volume adjustment--A mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site.

§336.1305. Commission Powers.

(a) The commission shall establish rates to be charged by the licensee. In establishing the rates, the commission shall ensure that they are fair, just, reasonable, and sufficient considering the value of the licensee's leasehold and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the reasonable rate of return equivalent to that earned by comparable enterprises.

(b) The commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates.

(c) The commission may refer a request for a contested case hearing to the State Office Administrative Hearings on the establishment of a rate under this subchapter.

(d) The commission may audit a licensee's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately charged and paid. The licensee shall comply with the commission's audit-related requests for information.

(1) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of waste disposal rates, payments and fees authorized by Texas Health and Safety Code, Chapter 401, and the veracity of information submitted to the commission.

(2) Each person subject to or involved with an audit or investigation under subsection (a) of this section shall cooperate fully with the audit or investigation by the executive director.

(e) After consideration of initial rate application or revision, the commission shall establish, by rule, the maximum disposal rate and schedule.

(f) The authority to establish the rate under this subchapter maybe delegated to the executive director if the application is not contested.

(g) If good cause exists, the executive director may initiate revision to the maximum disposal rate established under this subchapter, subject to notice and opportunity for a contested case hearing. Good cause includes, but is not limited to:

(1) there are material and substantial changes in the information used to establish the maximum disposal rate;

(2) information, not available at the time the maximum rate was established, is received by the executive director, justifying a rate revision; or

(3) the rules or statutes on which the maximum disposal rate was based have been changed by statute, rule, or judicial decision after the establishment of the maximum disposal rate.

§336.1307. Factors Considered for Maximum Disposal Rates.

Maximum disposal rate adopted by the commission shall consider the following factors and be sufficient to:

(1) allow the licensee to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Texas Health and Safety Code, §401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management, disposal, processing, or treatment of compact waste at the compact waste disposal facility; and

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, to provide financial assurance for the compact waste disposal facility as required by the commission under law and commission rules, and to reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission pursuant to Texas Health and Safety Code, §401.206.

§336.1309. Initial Determination of Rates and Fees.

(a) The licensee shall file an application with the executive director to establish initial maximum disposal rates that consider the factors identified in §336.1307 of this title (relating to Factors Considered for Maximum Disposal Rates). The application shall include exhibits, workpapers, summaries, annual reports, cost studies, proposed fees, and other information as requested by the executive director to demonstrate a rate that meets the requirements of this subchapter. In addition, the application shall include revenue requirements for cost recovery from the compact waste disposal facility.

(1) The licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director.

(2) After receipt of the application, the executive director shall review the application and recommend a rate to the commission for approval. In reviewing the application and evaluating the rate information, the executive director may request additional information from the licensee.

(3) The licensee shall provide notice of the application to all known customers that will ship or deliver waste to the compact waste disposal facility and shall provide notice of the application to any person by any method as directed by the executive director. The executive director shall maintain a Web site to inform the public on the process for consideration of the rate application.

(b) After notice and opportunity for a contested case hearing, the commission shall establish the initial maximum disposal rates that may be charged by the licensee. Upon request for a contested case hearing by any affected waste generator in the Texas Compact, the executive director shall directly refer an application to establish maximum disposal rates to the State Office Administrative Hearings for a contested case hearing.

(c) In the initial rate proceeding, the commission also shall determine the factors necessary to calculate the inflation adjustment, volume adjustment, extraordinary volume adjustment, and relative hazard.

§336.1311. Revisions to Maximum Disposal Rates.

(a) The maximum disposal rates that a licensee may charge generators shall be determined in accordance with this section, and §336.1307 of this title (relating to Factors Considered for Maximum Disposal Rates). The rates shall include all charges for disposal services at the site.

(b) Initially, the maximum disposal rates shall be the initial rates established pursuant to §336.1309 of this title (relating to Initial Determination of Rates and Fees).

(c) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation adjustments and volume adjustments. Such adjustments shall take effect unless the commission authorizes that the adjustments take effect according to an alternate schedule.

(d) Subsequently, a licensee may also file for revisions to the maximum disposal rates due to:

(1) changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross receipts basis against or collected by the licensee, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, commission regulatory fees, taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(2) factors outside the control of the licensee such as a material change in regulatory requirements regarding the physical operation of the site.

(e) For revisions to maximum disposal rates, the application must meet the requirements in §336.1309(a) of this title.

(f) For any revisions to the maximum disposal rate, including inflation and volume adjustments, the licensee shall provide notice to its customers concurrent with the filing.

§336.1313. Extraordinary Volume Adjustment.

(a) In establishing the extraordinary volume adjustment, unless the licensee and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the licensee's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(b) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

§336.1315. Revenue Statements.

(a) The licensee shall, on or before March 1st of each year, file with the commission an audited financial statement showing its gross receipts for the preceding calendar year. A validation of payments made in §336.103(f) and (g) of this title (relating to Schedule of Fees for Subchapter H Licenses) must also be included.

(b) The financial statement shall be prepared in accordance with Generally Acceptable Accounting Principles and audited by a Certified Public Accounting (CPA) firm. The audited financial statement shall include an Auditor's Report from the CPA indicating an "unqualified" opinion of the licensee's financial statements.

§336.1317. Contracted Disposal Rates.

(a) At any time, a licensee may contract with any person to provide a contract disposal rate that is lower than the maximum disposal rate.

(b) A contract or contract amendment shall be submitted to the executive director for approval at least 30 days before its effective date. If the executive director takes no action within 30 days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804570
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2008
For further information, please call: (512) 239-6087

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.222

The Texas Real Estate Commission withdraws the proposed new §535.222 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3869).

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804454
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: August 18, 2008
For further information, please call: (512) 465-3900

♦ ♦ ♦

22 TAC §535.223

The Texas Real Estate Commission withdraws the proposed repeal of §535.223 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3869).

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804455
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: August 18, 2008
For further information, please call: (512) 465-3900

♦ ♦ ♦

22 TAC §535.223

The Texas Real Estate Commission withdraws the proposed new §535.223 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3870).

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804456
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: August 18, 2008
For further information, please call: (512) 465-3900

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22 TAC §§535.227 - 535.231

The Texas Real Estate Commission withdraws the proposed repeal of §§535.227 - 535.231 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3871).

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804457
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: August 18, 2008
For further information, please call: (512) 465-3900

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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission withdraws the proposed new §§535.227 - 535.233 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3872).

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804453
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: August 18, 2008
For further information, please call: (512) 465-3900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §285.6

The Texas Commission on Environmental Quality withdraws the proposed amendment to §285.6 which appeared in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2781).

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804580
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: August 22, 2008
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.60, §65.62

Proposed amended §65.60 and §65.62, published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1494), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804595

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.3, 71.29, 71.31

The Employees Retirement System of Texas withdraws the proposed amendments to §§71.3, 71.29, and 71.31 which appeared in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5501).

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804610
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: August 25, 2008
For further information, please call: (512) 867-7288

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CHAPTER 73. BENEFITS

34 TAC §§73.11, 73.21, 73.26, 73.29

The Employees Retirement System of Texas withdraws the proposed amendments to §§73.11, 73.21, 73.26, and 73.29 which appeared in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5504).

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804609
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: August 25, 2008
For further information, please call: (512) 867-7288

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CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §§77.1, 77.11, 77.21

The Employees Retirement System of Texas withdraws the proposed amendments to §§77.1, 77.11, and 77.21 which appeared in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5506).

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804608
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: August 25, 2008
For further information, please call: (512) 867-7288

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.57

The Texas Ethics Commission adopts an amendment to §12.57, relating to the requirements for filing a complaint. The amendment is adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5439) and will not be republished.

The amendment to §12.57 requires a complainant to provide the mailing address of the person against whom a complaint is filed. A sworn complaint filed with the commission is required to comply with form requirements that are found in statute and in a commission rule. Currently, the rule requires a complaint to include the mailing address of each respondent, if known to the complainant. Occasionally, complaints do not include a valid address and sometimes do not include an address at all. The lack of an address makes it difficult to comply with the statutory requirement to notify a respondent of a complaint.

No comments were received regarding the proposed rule during the comment period.

The amendment to §12.57 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804471
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: September 8, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER J. REPORTS BY A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

1 TAC §20.577

The Texas Ethics Commission adopts an amendment to §20.577, relating to reporting requirements for a candidate for state chair of a political party. The amendment is adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5439) and will not be republished.

Section 20.577(c)(2) provides in relevant part that a candidate for state chair must file a report covering "the period that begins on either the day after the committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 10th day before the convening. Instead of "the day after" the rule should state "the day." Also, instead of "committee" the rule should state the "candidate." The amendment to §20.577(c)(2) amends the existing rule to correct the typographical errors.

No comments were received regarding the proposed rule during the comment period.

The amendment to §20.577 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804472
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: September 8, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission adopts amendments to §§34.45, 34.65, and 34.85, relating to the reporting requirement by a lobbyist or an entity. The amendments are adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5440) and will not be republished.

The amendment to §34.45 provides that an entity that avoids the requirement to register as a lobbyist by having a lobbyist report on its behalf is subject to §305.024 of the Government Code.

The amendment to §34.65 requires a registered lobbyist reporting compensation on behalf of an entity that is avoiding registration to report the compensation by the date on which the entity, if registered, would have been required to report the compensation.

The amendment to §34.85 sets a criteria that must be satisfied before a registered lobbyist may report an expenditure on behalf of an entity in order for the entity to avoid the requirement to register as a lobbyist.

No comments were received regarding the proposed rules during the comment period.

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.45

The amendments to §34.45 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804468
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: September 8, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.65

The amendments to §34.65 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804469
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: September 8, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER D. LOBBY ACTIVITY REPORTS

1 TAC §34.85

The amendments to §34.85 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804470
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: September 8, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 73. STATUTORY DOCUMENTS

SUBCHAPTER A. LABOR ORGANIZERS

1 TAC §73.3

The Office of the Secretary of State adopts an amendment to 1 TAC §73.3, concerning labor organizer's card. The amendment is adopted without change to the text as proposed in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3853). The amendment is adopted in response to a public comment, which noted an inaccurate reference to the state seal under paragraph (5) of the section.

The paragraph now reads: "the signature of the secretary of state, dated and attested by his seal of office." As pointed out by the commenter during a formal review of Secretary of State rules, the "seal" is not the seal of office for the secretary of state. It is the State Seal of Texas as defined by the Texas Constitution, Article IV, Section 19.d. The amendment is adopted to correct this error.

No additional comments were received concerning the amendment.

Statutory Authority: §2001.004(1) of the Government Code.

The rule implements §101.110 of the Labor Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804532

Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 463-5705

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CHAPTER 78. ATHLETE AGENTS

The Office of the Secretary of State adopts amendments to 1 TAC §§78.1, 78.11, 78.13, 78.21, 78.31, 78.50, 78.51, 78.53, and 78.60 and new §78.32 and §78.33, relating to athlete agents. The amendments and new rules are adopted without change to the text as proposed in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5442).

The amendments and new rules are adopted in order to correct erroneous citations to rules and statutes relating to athlete agents, to specify the location of forms on the Office of the Secretary of State's web site; to clarify the procedures for renewal of registrations; and to conform the rules to existing practices and procedures related to athlete agents.

No comments were received concerning the amendments.

SUBCHAPTER A. REGISTRATION

1 TAC §§78.1, 78.11, 78.13, 78.21

The amendments are adopted under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804533
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-9856

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SUBCHAPTER B. SURETY BONDS AND AFFIDAVITS

1 TAC §§78.31 - 78.33

The amendments are adopted under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804534
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-9856

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SUBCHAPTER C. CONTRACTS

1 TAC §78.50, §78.51

The amendments are adopted under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804535
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-9856

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SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §78.53, §78.60

The amendments are adopted under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804536
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-9856

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CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.38

The Office of the Secretary of State adopts new §81.38, concerning Administration of Voter Registration Associated with Address Confidentiality Program, without changes to the text as proposed in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5445).

The new section is necessary to implement the voting procedures necessary to allow certified participants in the new address confidentiality program described in Chapter 56, Subchapter C, Texas Code of Criminal Procedure (§§56.81 - 56.93 (Vernon Supp. 2008)) to vote by mail in Texas elections without disclosing their actual residence address.

No comments were received concerning the new rule.

Statutory Authority: The new rule is adopted under Texas Election Code Annotated §13.002(e) (Vernon Supp. 2008), which authorizes the Secretary of State to adopt administrative rules as needed to administer the voting procedures for participants in the address confidentiality program described in Chapter 56, Subchapter C, Texas Code of Criminal Procedure (§§56.81 - 56.93 (Vernon Supp. 2008)).

Cross Reference to Statute: The statutory provisions affected by the new rule are Texas Code of Criminal Procedure §§56.81 et seq. (Vernon Supp. 2008); Texas Election Code §§13.002, 18.005, 18.0051, 82.007, and 84.0021 (Vernon Supp. 2008).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804537
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5640

♦ ♦ ♦

1 TAC §81.39

The Office of the Secretary of State adopts new §81.39, concerning Procedures for Pilot Program for Emailing Ballots to FPCA Voters, with changes to the text as proposed in July 11, 2008, issue of the *Texas Register* (33 TexReg 5448).

The new section is necessary to implement a pilot program which was enacted by the 80th Legislature to allow military voters who are overseas and who applied by FPCA to receive their November 2008 general election for state and county officers ballots via email if their regular ballot and balloting materials have not been received in sufficient time to cast their ballots by mail.

No comments were received concerning the new rule.

Statutory Authority: The new rule is adopted under Texas Election Code Annotated, §101.0071(j) (Vernon Supp. 2008), which authorizes the Secretary of State to adopt administrative rules as needed to administer the pilot program which allows for certain FPCA voters to receive their ballots for the November 2008 general election for state and county officers via email. The pilot program is described in §101.0071 of the Texas Election Code.

Cross Reference to Statute: The statutory provisions affected by the new rule are Texas Election Code Annotated, §101.0071 (Vernon Supp. 2008); and Texas Government Code Annotated, Chapter 255 (Vernon Supp 2008).

§81.39. Procedures for Pilot Program for Emailing Ballots to FPCA Voters.

(a) Participation in pilot program.

(1) A county is a "participating county" if they return the Request to Participate form, supplied by the Office of the Secretary of State, by the deadline of September 5, 2008.

(2) Upon receiving a participating county's Request to Participate form, the Office of the Secretary of State will respond to the early voting clerk via email to notify them that their participation is approved.

(b) Voters are eligible to receive ballots via email if the following conditions in paragraphs (1) - (8) of this subsection are met:

(1) Balloting materials have been provided to a voter in accordance with §101.0071(a) of the Texas Election Code;

(2) The voter is a member of the armed forces and is an FPCA registrant who is eligible for early voting by mail;

(3) The voter provides a current address that is located outside of the United States and is voting from outside of the United States;

(4) The voter provides an email address that contains the voter's name, to the extent that the name provided on the FPCA and in the email address are substantially the same;

(5) The email address provided also ends with the suffix ".mil;"

(6) The voter requests balloting materials to be sent to them via email because they did not receive the balloting materials provided by mail;

(7) The voter requests that their ballot is emailed to them on or after Monday, September 22, 2008; and

(8) The voter requests that their ballot is emailed to them no later than Tuesday, October 28, 2008.

(c) Requesting ballot; providing balloting materials to voters.

(1) Voters who meet the eligibility requirements in subsection (b) of this section may request that their balloting materials be sent to them via email by sending an email from his or her .mil account to the early voting clerk.

(2) If the voter emails the early voting clerk to request balloting materials by mail, the early voting clerk shall update the voter's FPCA with their email address, if this information is not on the voter's current FPCA.

(3) Email addresses are not subject to public disclosure under Chapter 552, Texas Government Code. Early voting clerks shall ensure that the voter's email address is excluded from public disclosure.

(4) If balloting materials are sent to one eligible voter under these rules, then balloting materials must be sent to each eligible voter under these rules.

(5) The following materials must be sent to each eligible voter:

(A) the appropriate ballot;

(B) ballot instructions;

(C) signature sheet;

(D) information about how to print a ballot secrecy envelope from the Federal Voting Assistance Program (FVAP) website;

(E) information about how to print a carrier envelope from the FVAP website; and

(F) list of certified write-in candidates, if applicable.

(d) Permissible method of returning ballot sent to voter via email.

(1) Voters who receive balloting materials from the early voting clerk via email must return their marked ballots by regular mail.

(2) Marked ballots may not be returned via email. Any ballot returned via email may not be counted.

(e) Processing and qualifying ballots.

(1) Upon receipt of a voted emailed ballot, the early voting clerk shall place the carrier envelope containing the marked ballot, and the signature sheet, into a jacket envelope, which also contains the voter's FPCA.

(2) The early voting clerk shall note on the early voting by mail roster any ballots emailed to overseas military voters under this program.

(3) All jacket envelopes containing marked ballots voted under this program must be delivered to the early voting ballot board when they convene for the second time, to count provisional and overseas ballots.

(4) The board should make sure that each jacket envelope contains:

(A) the voter's FPCA;

(B) the envelope in which the voter returned their ballot;

(C) the signature sheet; and

(D) the carrier envelope containing the marked ballot.

(5) The board must compare the voter's signature as it appears on the signature sheet with the voter's signature as it appears on the FPCA. If the board determines that the signatures could have been written by the same person, the ballot should be accepted.

(6) If the voter returned both the original mail ballot ("mail ballot") and the ballot which was emailed to them ("emailed ballot"), then only the emailed ballot may be accepted.

(7) If the voter only returned the mail ballot, then that ballot may be accepted if the early voting clerk received an email from the voter stating that their regular mail ballot arrived.

(f) Counting ballots. The qualified, accepted ballot is handled in the following manner:

(1) Open the carrier envelope and remove the ballot envelope.

(2) Place the unopened ballot envelope in a ballot box.

(3) Enter the voter's name on the poll list for early voters.

(4) Place the FPCA, the carrier envelope, the signature sheet, and any accompanying papers back in the jacket envelope.

(g) Rejected ballots.

(1) If an FPCA, signature sheet and carrier envelope do not meet all the requirements outlined in subsection (e) of this section, the ballot must be rejected and may not be counted.

(2) The rejected ballot should be processed by:

(A) Writing the word "Rejected" on the carrier envelope;

(B) Writing the word "Rejected" on the corresponding jacket envelope;

(C) Placing the unopened carrier envelope containing the rejected ballot in the large envelope or container marked "Rejected Early Ballots";

(D) Having the presiding judge sign and seal the "Rejected Early Ballot" envelope;

(3) The presiding judge must also write the date and nature of the election on the envelope.

(4) A record must be kept of the number of rejected ballots placed in the "Rejected Early Ballot" envelope.

(5) A notation must be made on the carrier envelope of any ballot which was rejected after the carrier envelope was opened, stating the reason the carrier envelope was opened and rejected; and

(6) The FPCA, signature sheet, and any accompanying papers and affidavits must be placed in the jacket envelope.

(7) The presiding judge of the board must deliver notice of the reason for the rejection to the voter's listed residence address within ten days of the election.

(h) Expiration of this section. This section expires February 16, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804538
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 463-5640

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts an amendment to §20.22, concerning stalk destruction deadlines without changes to the proposed text as published in the July

25, 2008, issue of the *Texas Register* (33 TexReg 5831). The amendment is adopted to modify the destruction deadline date for Pest Management Zone 2, Area 3.

The amendment is adopted to change the destruction deadline date for Zone 2, Area 3, from September 1 to September 15. The amendment is adopted to implement a request from the Pest Management Zone 2 Cotton Producer Advisory Committee (CPAC) to delay the cotton stalk destruction deadline for Zone 2, Area 3 until September 15. The amendment is adopted to reflect current growing practices in Zone 2, Area 3.

No comments were received on the proposal.

The amendment to §20.22 is adopted in accordance with the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804599
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 14, 2008
Proposal publication date: July 25, 2008
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §33.23, relating to the surcharges assessed for permits and licenses issued by the commission without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5454). The commission also adopts two new sections. New §33.25 relates to the implementation of two-year licenses and permits issued by the commission and is adopted with changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5454). New §33.26 relates to the fee for a manufacturer's agent's warehousing permit and is adopted without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5454).

The amendments to §33.23 add surcharges for the following new permit types: direct shipper's permit, manufacturer's agent's warehousing permit, out-of-state wine only package store permit, and promotional permit. The commission is required by §5.50 to assess a surcharge on each application for an original or renewal permit issued by the commission in addition to a fee set by the Texas Alcoholic Beverage Code (code) or by rule.

New §33.25 reflects the timeline for the commission's implementation of two-year licenses and permits. The commission is required by §11.09 and §61.03 of the code to issue a permit or license that will expire on the second anniversary of the date on which it is issued. The code sections do, however, provide that the commission may issue a license or permit for less than two years to maintain a reasonable annual distribution of review work and fees. The schedule will provide for a graduated implementation of two-year licenses to allow the commission to maintain a reasonable distribution of work and fees over the implementation period. The initial implementation will begin on October 1, 2008, and end on September 1, 2009.

New §33.26 establishes a fee of $750.00 for a manufacturer's agent's warehousing permit issued under Chapter 55 of the code. No fee for the permit is established under the chapter. Section 5.50 provides the commission with authority to set a fee by rule if no statutory fee is established.

No comments were received on the proposed amendments to §33.23.

No comments were received from the public on the proposed new §33.25, however, a comment was received from staff and corrections were made to Figures 16 TAC §33.25(d) and 16 TAC §33.25(e) as a result of the comment. Specifically, Food and Beverage Certificate [FB] and Beverage Cartage Permit [PE] were added to Figure §33.25(d), and Package Store Permit [P], Wine Only Package Store Permit [Q], Out-of-State Wine Only Package Store Permit [QO], Package Store Tasting Permit [PS], Non-Resident Seller's Permit [S], and Non Resident Brewer's Permit [U] were added to Figure §33.25(e).

No comments were received on the proposed new §33.26.

16 TAC §33.23

The amendments to §33.23 are authorized by §5.50 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule. The new §33.25 is authorized by §§5.50, 11.09, and 61.03, which provide the commission with authority to issue a license or permit for a two-year term. The new §33.26 is authorized by Chapter 55 and §5.50 of the code; Chapter 55 creates the permit type and §5.50 provides the commission with authority to adopt a fee if one is not established by statute. The amendments to §33.23 and new §33.25 and §33.26 are authorized by §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: §§5.31, 5.50, 11.09, 61.03 and Chapter 55 of the Alcoholic Beverage Code are affected by the adoption of the amendments and the new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804588

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 206-3204

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16 TAC §33.25

The amendments to §33.23 are authorized by §5.50 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule. The new §33.25 is authorized by §§5.50, 11.09, and 61.03, which provide the commission with authority to issue a license or permit for a two-year term. The new §33.26 is authorized by Chapter 55 and §5.50 of the code; Chapter 55 creates the permit type and §5.50 provides the commission with authority to adopt a fee if one is not established by statute. The amendments to §33.23 and new §33.25 and §33.26 are authorized by §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: §§5.31, 5.50, 11.09, 61.03 and Chapter 55 of the Alcoholic Beverage Code are affected by the adoption of the amendments and the new rules.

§33.25. Alcoholic Beverage License and Permit Fees and Surcharges.

(a) This rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in §33.23 of this chapter (relating to Alcoholic Beverage License and Permit Surcharges).

(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.

(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(c)

(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(d)

(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.
Figure: 16 TAC §33.25(e)

(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.
Figure: 16 TAC §33.25(f)

(g) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804589
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 206-3204

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16 TAC §33.26

The amendments to §33.23 are authorized by §5.50 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule. The new §33.25 is authorized by §§5.50, 11.09, and 61.03, which provide the commission with authority to issue a license or permit for a two-year term. The new §33.26 is authorized by Chapter 55 and §5.50 of the code; Chapter 55 creates the permit type and §5.50 provides the commission with authority to adopt a fee if one is not established by statute. The amendments to §33.23 and new §33.25 and §33.26 are authorized by §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: §§5.31, 5.50, 11.09, 61.03 and Chapter 55 of the Alcoholic Beverage Code are affected by the adoption of the amendments and the new rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804593
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: September 11, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.27

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.27, regarding Certification and Licensure by Reciprocity, with changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5461).

The amendments eliminate the prohibition on Texas residents seeking licensure or certification by reciprocity and clarify language relating to the state in which the applicant is already licensed.

At adoption, the non-substantive substitution of "state of current licensure" for "original issuing state" was made in subsections (d) and (f) in order to clarify the references to the state in which the applicant for licensure by reciprocity is currently licensed and upon which the applicant is basing the application for reciprocity. For example, if an applicant was originally licensed in one state but subsequently became licensed in a second state and allowed the first license to expire, the application would be based on the state in which the applicant is currently licensed.

Devon V. Bijansky, Assistant General Counsel, has determined that the reasoned justification for the rule as adopted is that Texas residents who hold appraiser licenses or certifications issued in other states (who, therefore, have already proven their qualifications to the other state) will be able to seek Texas licensure or certification without the necessity of documenting their qualifications again. Section 153.27 will also be consistent with Texas Occupations Code §1103.209, which permits residents and non-residents alike to seek licensure and certification by reciprocity.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

§153.27. Certification and Licensure by Reciprocity.

(a) A person who is licensed or certified as an appraiser under the laws of a state having licensure or certification requirements that have not been disapproved by the Appraisal Subcommittee may apply for a license or certification under the Act by completing and submitting to the board the application for licensure or certification and paying to the board the fee. An applicant for certification or licensure by reciprocity also must complete and submit a Supplement to Application for Appraiser Certification or Licensing by Reciprocity or its successor.

(b) A non-Texas resident person applying for a license or certification under this subsection must submit an irrevocable consent to service of process in this state on a form prescribed by the board.

(c) An application may not be accepted from a person from a state that refuses to offer reciprocal treatment to residents of this state who are certified or licensed real estate appraisers.

(d) The board shall seek verification from an applicant's state of current licensure that the applicant's license or certification is valid and in good standing. A reciprocal license or certificate may not be issued without the verification required by this subsection.

(e) A person holding a license or certification by reciprocity must pay the federal registry fee and other fees imposed by the board. The total application fees required for certification or licensure by reciprocity shall be equal to the amount of the application, processing, and issuance fees required for a Texas certified or licensed appraiser to become certified or licensed.

(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's state of current licensure expires but in no instance more than two years from the date of issuance of the reciprocal license or certification.

(g) Renewal of a certification or license granted through reciprocity shall be in the same manner, with the same requirements, term, and fees as for the same classification of certified or licensed appraiser as provided in §153.17 of this title (relating to Renewal of Certification, License, or Trainee Approval).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2008.

TRD-200804450
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 7, 2008
Proposal publication date: July 11, 2008
For further information, please call: (512) 465-3900

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to §273.4 without change to the proposed text published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4449).

The amendments raise the license renewal fees by $1.00 in order to provide funding for the appropriations made by the 80th Legislature. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely obtain continuing education, since these fees are based on the license renewal fee.

No comments were received.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304 and 351.308; and House Bill 1, 80th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, and §351.308 as setting the fee for delayed continuing education compliance. House Bill 1 authorizes salary adjustments and the funding mechanism for the adjustments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2008.

TRD-200804524
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 10, 2008
Proposal publication date: June 6, 2008
For further information, please call: (512) 305-8502

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208

The Texas Real Estate Commission (TREC) adopts an amendment to §535.208, Application for a License, without changes to the proposed text as published in the July 18, 2008, issue of the *Texas Register* (33 TexReg 5635) and will not be republished. The amendment adopts by reference a revised Certificate of Insurance, Form REI 8-1, which includes revisions to the Certificate of Insurance form for inspectors to use in showing proof of liability insurance coverage to the Commission.

The amendment modifies the Certificate of Insurance form in order to clarify the types of conduct for which coverage is required, to clarify that the aggregate limit is as specified in the policy, and to extend the time period within which insurers must notify TREC of canceled or non-renewed policies from 10 days to 30 days.

The reasoned justification for the rule as adopted is greater clarity regarding the type of coverage that inspectors must carry and, therefore, increased availability of insurance coverage for inspectors. The increased time period for insurers to notify TREC of canceled or non-renewed policies reflects the current practices of insurers regarding the processing of policy renewals.

No comments were received regarding the amendments as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804539
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: September 11, 2008
Proposal publication date: July 18, 2008
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER A. THE BOARD

22 TAC §661.10, §661.11

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.10, concerning financial requirements and §661.11, concerning board vacancies. The amendments are adopted without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5218) and will not be republished.

The amendment to §661.10 will further clarify the financial procedures of the board and will update legislative changes made in regards to the Texas Building and Procurement Commission. The amendment to §661.11 will clarify board procedure in regards to vacancies.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804600
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.45, §661.50

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.45, concerning examinations, and §661.50, concerning Surveyor Intern experience. The amendments are adopted without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5219) and will not be republished.

The amendment to §661.45 will further clarify the examination process concerning the length of the examination and acceptable calculators. The amendment to §661.50 will clarify experience needed as an Surveyor Intern.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804601
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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22 TAC §661.48

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §661.48, concerning unsuccessful examination, without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5219) and will not be republished.

The repeal of this amendment will clarify board policy that enables an applicant to repeat the examination as many times as warranted.

No comments were received regarding the repeal of this rule.

The repeal is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804602
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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22 TAC §661.58

The Texas Board of Professional Land Surveying (TBPLS) adopts new §661.58, concerning the Texas Guaranteed Student Loan Corporation Defaulters, without changes as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5221) and will not be republished. This rule was under Chapter 663, Subchapter A, Ethical Standards that was repealed and is being added under Chapter 661, Subchapter D, concerning Applications, Examinations, and Licensing.

The new rule will add language into a more suitable chapter concerning registrants who are Texas Guaranteed Student Loan Corporation Defaulters.

No comments were received regarding this new rule.

The new rule is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804606
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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SUBCHAPTER E. CONTESTED CASES

22 TAC §661.62

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.62, concerning Complaint Process, without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5221) and will not be republished. This rule will be retitled from Filing of Documents to Complaint Process in order to more accurately reflect the subject of the amendment.

The new title of the amendment will clarify the contents of the rule.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804603
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER A. ETHICAL STANDARDS

22 TAC §663.12

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §663.12, concerning Texas Guaranteed Student Loan Corporation Defaulters, without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5222) and will not be republished. This section is being moved to Chapter 661, Subchapter D, Applications, Examinations and Licensing.

The repeal will remove this language from Ethical Standards.

No comments were received regarding the repeal of this rule.

The repeal is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804604
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.18

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.18 concerning Certifications without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5222) and will not be republished. This section adds language that had been previously listed under Chapter 663, Subchapter B, Professional and Technical Standards concerning certifying services.

The amendment will further clarify the certification process.

No comments were received concerning adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2008.

TRD-200804607
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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22 TAC §663.23

The Texas Board of Professional Land Surveying (TBPLS) adopts the repeal of §663.23, concerning Certifying Services, without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5223) and will not be republished. This section is being moved to §663.18 that deals with Certifications.

The repeal will remove this language and add it to an existing rule.

No comments were received regarding the repeal of this rule.

The repeal is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200804605
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: September 14, 2008
Proposal publication date: July 4, 2008
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 4. DSHS CONTRACTING RULES

SUBCHAPTER A. PROTEST PROCEDURES FOR CERTAIN DSHS PURCHASES

25 TAC §4.1

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §4.1, concerning protest procedures for resolving bidder or applicant or potential bidder or applicant protests relating to purchasing issues. The section is adopted without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2652) and, therefore, will not be republished.

BACKGROUND AND PURPOSE

The Texas Government Code, §2155.076, Protest Procedures, requires each state agency by rule to develop and adopt protest procedures for resolving protests relating to purchasing issues. The department's Office of General Counsel placed the contract protest procedures, residing in department policy, in new §4.1 to prevent any confusion over the application of state law and rules applicable to the purchase of goods and services, and provide better public access to the protest procedures. The new section is the initial rule in new Chapter 4, which will eventually contain all department contracting rules. This rule supersedes 25 Texas Administrative Code, §417.60, Protest and Appeal Procedures, which is a legacy Texas Department of Mental Health and Mental Retardation rule earmarked for repeal at a later date.

SECTION-BY-SECTION SUMMARY

New §4.1 contains the process and procedure for bidder or applicant or potential bidder or applicant to protest awards or potential awards of contracts.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new section is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2008.

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §§140.400 - 140.430

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§140.400 - 140.430, concerning the licensing and regulation of chemical dependency counselors. Sections 140.402, 140.423, 140.425, and 140.430 are adopted with changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1968). New §§140.400, 140.401, 140.403 - 140.422, 140.424, and 140.426 - 140.429 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal of §§450.100 - 450.126 and new rules are necessary to implement amendments to Occupations Code, Chapter 504, made by Senate Bill (SB) 155, which was enacted by the 80th Legislature, Regular Session, 2007. New and amended rule provisions implementing SB 155 include provisions relating to the approval of peer assistance programs, the certification of clinical supervisors, modifications to the continuing education requirement for renewal of the licensed chemical dependency counselor (LCDC) license, the recognition of other certifications on the LCDC license, and ensuring that all persons now licensed, registered, or certified under Occupations Code, Chapter 504, are subject to the same extent to disciplinary action and to the criminal history standards developed under Chapter 504. The repeal and new rules also consolidate existing Professional Licensing and Certification Unit program rules into 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 450.100 - 450.126 have been reviewed and the department has determined that, except as amended under the proposed new rules, as further described in this preamble, the reasons for adopting the sections continue to exist because rules on this subject are needed. However, the department is repealing the existing sections and adopting the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

In addition to the changes specifically outlined, the existing rules have been revised and reorganized as new rules in §§140.400 - 140.430 to ensure appropriate section, subsection, and paragraph organization and captioning; to ensure clarity; to improve spelling, grammar, and punctuation; to improve consistency between agency programs, as appropriate; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy of legal citations; to delete repetitive, obsolete, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible. Additionally, provisions relating to definitions, complaints, and enforcement procedures were added to the subchapter as described below to consolidate the provisions relating to regulation and licensure under Occupations Code, Chapter 504.

New §140.400 provides a comprehensive list of definitions within the subchapter for terms used in the subchapter, including added definitions for certified clinical supervisor and peer assistance program, both new terms added to implement SB 155, and additions and modifications to other terms needed to update or clarify the meaning of terms used within the subchapter.

New §140.403 increases the renewal fee for licensed chemical dependency counselors to $115 biennially from $100 biennially. A new initial and renewal certification fee for certified clinical supervisor is $20 biennially. These changes are calculated to allow the department to cover the costs of administering Occupations Code, Chapter 504. The fee for replacement or duplicate certificates is reduced to $10, instead of $25. In light of the low volume of requests for replacement or duplicate certificates and the consolidation of the LCDC licensing program with other professional licensing programs within the department, it is estimated that a $10 fee will be adequate to cover the costs of replacement or duplicate certificates.

New §140.408 adds the requirement and applicable waiver provision mandated by SB 155 relating to access to a peer assistance program for an LCDC applicant.

New §140.409 adds the option of certified clinical supervisors as a means to obtain supervised work experience, in order to implement SB 155.

New §140.410 adds provision for closure of a CTI or surrender of a CTI registration in response to a complaint to be deemed to be the result of formal disciplinary action, consistent with new §140.428 of this title (Relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint).

New §140.411 establishes requirements and procedures relating to certification of clinical supervisors to implement SB 155.

New §140.415 allows for the affixing of certain approved adhesive labels to the LCDC license certificate to implement SB 155, and provides for voluntary relinquishment of a license other than in response to a complaint.

New §140.416 reduces the continuing education hours required for LCDC license renewal to implement SB 155. For license holders who hold a master's or more advanced degree, the requirement is 24 hours biennially. Other license holders must complete 40 hours biennially. The maximum number of continuing education hours that may be earned through teaching a course has been reduced in proportion to the reduction in the total number of required continuing education hours.

New §140.418 establishes procedures for continuing education audits of license holders, and omits the allowance for carry-over of continuing education hours.

New §140.420 implements SB 155 by establishing requirements and procedures for the approval of peer assistance programs to assist LCDCs whose ability to perform a professional service is impaired or likely to be impaired by abuse of or dependency on drugs or alcohol.

New §140.421 and §140.422 incorporate the role of certified clinical supervisors into current standards for supervision and training of counselor interns. Section 140.421 requires counselor intern supervision documentation to be maintained for five years, rather than four, consistent with the period of counselor intern registration.

New §140.423(a)(9) requires that client records be maintained for at least five years, instead of six years.

New §§140.424 - 140.429 establish, within the subchapter governing the licensing and regulation of LCDCs, rules governing complaints, investigations, disciplinary actions, administrative penalties, informal disposition of contested cases, voluntary license surrender, and contested case procedures, and improve consistency of practice with other professional licensing programs within, or administratively attached to, the department under House Bill 2292, 78th Legislature, Regular Session, 2003, while remaining consistent with the requirements of Occupations Code, Chapter 504. Administrative penalty ranges, based upon severity and repetition of violations, have been increased to promote this consistency and to allow the department greater latitude to determine appropriate penalties within statutory limits. In addition, consistent with SB 155, all persons now licensed, registered, or certified under Occupations Code, Chapter 504, will be subject to the disciplinary provisions in this subchapter.

New §140.430 establishes criminal history standards equally applicable to all licensees, registrants, and certificate holders under Occupations Code, Chapter 504, as provided for by SB 155.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Institute of Chemical Dependency Studies and Texas Medical Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §140.402, one commenter requested that the proposed rule be revised to delete §140.402(b)(3), which reads, "LCDCs may diagnose substance disorders, but anything other than a mental health diagnostic impression must be determined by a qualified professional." The commenter objected that this reference to diagnosis within the scope of practice section of the rule does not accurately parallel the definitions of chemical dependency counseling and the practice of chemical dependency counseling under Occupations Code, §504.001, which do not refer to an LCDC diagnosing substance use disorders. The commenter contrasts this statutory definition with the practice of medicine, which includes specific reference to diagnosis.

Response: The commission agrees that the language should parallel the statutory language and has replaced the language at issue in §140.402(b)(3) with the following: "the focus of an LCDC's services shall be on assisting individuals or groups to develop an understanding of chemical dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs, as affected by claimed or indicated chemical dependency problems." Since this language already exists in the definition of chemical dependency counseling under Occupations Code, §504.001(1), it does not subject LCDCs to new standards or requirements.

Comment: Concerning §140.430, several comments were received. One generally opposed any criminal history restrictions on licensure as an LCDC. The other two commenters did not question the legitimacy of criminal history restrictions generally. However, one opposed applying the same criminal history standards to counselor interns (CIs) as to LCDCs, and the other emphasized the perceived excess of a five-year timeframe after conviction before the application of an otherwise eligible appli-

cant for CI registration could be granted, particularly when the conviction might not be sufficiently related to the field to justify this length of a restriction. The commenter did not specify those offenses thought to be inadequately related to the field to justify the proposed rule's timeframes.

Response: The commission disagrees because the focus of the comments is on provisions of the rule that are based upon specific statutory requirements and parameters. Concerning the criminal history standards generally, Occupations Code, Chapter 504, and in particular §504.1525, §504.2025, and §504.2525, as amended by SB 155, mandate certain license, certification, and registration refusals, suspensions, and refusals to renew based upon criminal history, and refer to §504.1525 for a description of the offenses to which the sections apply. The commission and the department are required to implement the statute's mandates through their respective rulemaking and enforcement roles. The five-year timeframe specifically challenged by one commenter is statutorily specified in §504.1525 with reference to Class B misdemeanors, and no statutory distinction is made between restrictions on LCDC licensure and CI registration. Nevertheless, some of the commenter's concerns were addressed in SB 155, 80th Legislature, Regular Session, 2007, through the creation of an exception, under the Occupations Code, §504.1525(b) and §504.2025(b), to criminal history bars to initial and renewal LCDC licensure when a person demonstrates successful completion of an approved peer assistance program. No change was made to the rule as a result of these comments.

Comment: Concerning §140.400, one commenter opposed the revised definition of a qualified credentialed counselor (QCC), in that it no longer includes licensed master social workers.

Response: The commission disagrees with the comment. Under 25 TAC, Chapter 140, the term "QCC" is limited to a clinical supervision context. In 22 TAC, §781.402(b), which delineates the Practice of Master's Social Work, states "The Practice of Master's Social Work may include the Practice of Clinical Social Work in an agency employment setting under clinical supervision. A LMSW may practice clinical social work under contract with an agency when under a board approved clinical supervision plan." It would not be consistent with this social work rule for an LMSW, who must him or herself be supervised to engage in clinical social work, to supervise the clinical work of a counselor intern. No change was made to the rule as a result of this comment.

Comment: Concerning §140.425 and §140.423, one staff comment noted that conforming amendments should be made to §140.425(b)(1) and §140.423(c)(5)(A) for consistency with §140.425(g)(2)(A), which refers to identifying the order violations being alleged in giving notice of proposed disciplinary action. The commenter suggests conforming amendments to add an explicit reference to order violations in the bases for disciplinary action under §140.425(b)(1), and to the specific compliance mandated under §140.423(c)(5).

Response: The commission agrees and revised §140.425(b)(1) and §140.423(c)(5)(A), so that §140.425(b)(1) now reads, "...violates or assists another to violate the Act, a rule under this subchapter, or an Order issued under the Act or this subchapter's rules," and §140.423(c)(5)(A) now reads, "...comply with all applicable laws, regulations, and orders."

Comment: Concerning proposed new language in §140.430(h), one staff comment noted that, for persons suspended under subsection (h) who, at the time of renewal, have been convicted or placed on community supervision for the offense that initially resulted in a summary suspension, the proposed language, providing that a license, certification, or registration suspended under that section will remain suspended upon renewal during the suspension period until the specified timeframes have been met, would conflict with §140.430(e) and Occupations Code, §504.2025, which require denial of a renewal application if the applicant has been convicted or placed on community supervision for one of the specified offenses.

Response: The commission agrees that the proposed language needs to be restated and clarified to avoid any internal conflict in the language of the rule, and to ensure consistency with the language of the statute. The last sentence of §140.430(h) was replaced with the following, "An application to renew any form of license suspended under this subsection will be subject to the denial and exception provisions as stated in subsection (e) of this section, to the extent applicable at the time of renewal application. If subsection (e) of this section does not apply, the applicant is otherwise eligible for renewal, and the applicant is still subject to summary suspension under this subsection, the applicable license will remain suspended under this subsection upon renewal, and until paragraph (2) of this subsection or subsection (e) of this section becomes applicable."

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rules are authorized by Occupations Code, §504.051, which authorizes rulemaking necessary to carry out the duties established under Occupations Code, Chapter 504, the establishment of standards of conduct and ethics for Chapter 504 licensees, and the establishment of additional criteria for peer assistance programs for chemical dependency counselors; Occupations Code, §504.053, which authorizes the Executive Commissioner of the Health and Human Services Commission to set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering Chapter 504; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§140.402. Scope of Practice.

(a) An LCDC is licensed to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the KSAs as defined in §140.400 of this title (relating to Definitions). The license does not qualify an individual to provide services outside this scope of practice.

(b) The scope of practice for an LCDC includes services that address substance abuse/dependence and/or its impact on the service recipient subject to the following:

(1) the LCDC is prohibited from using techniques that exceed his or her professional competence;

(2) the service recipient may only be the user, family member or any other individual involved in a significant relationship with a user;

(3) the focus of an LCDC's services shall be on assisting individuals or groups to develop an understanding of chemical dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities, and needs, as affected by claimed or indicated chemical dependency problems; and

(4) LCDCs are not qualified to treat individuals with a mental health disorder or provide family counseling to individuals whose presenting problems do not include chemical dependency.

§140.423. Professional and Ethical Standards.

(a) This subsection applies to counseling records of a LCDC's private practice. Documentation of professional services rendered in another setting shall be created and maintained in accordance with any legal requirements for documentation applicable to the particular setting in which they were provided.

(1) The counselor shall establish and maintain a record for every client at the time of initial service delivery. The client record shall include:

(A) client identifying information;

(B) assessment results, including a statement of the client's problems and/or diagnosis;

(C) plan of care;

(D) documentation of all services provided, including date, duration, and method of delivery; and

(E) a description of the client's status at the time services are discontinued.

(2) The counselor shall maintain a record of all charges billed and all payments received.

(3) All entries shall be permanent, legible, accurate, and completed in a timely manner.

(4) All documents and entries shall be dated and authenticated. Authentication of electronic records shall be by a digital authentication key.

(5) When it is necessary to correct a record, the error shall be marked through with a single line, dated, and initialed by the counselor.

(6) The counselor shall protect all client records and other client-identifying information from destruction, loss, tampering, and unauthorized access, use or disclosure. Electronic client information shall be protected to the same degree as paper records and shall have a reliable backup system.

(7) The counselor shall comply with all applicable state and federal laws relating to confidentiality, including the requirements of Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records) and Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records).

(8) The counselor shall not deny clients access to the content of their records except as provided by law, including Texas Health and Safety Code, §611.0045 (relating to Right to Mental Health Record).

(9) Client records shall be kept for at least five years. Records of adolescent clients shall be kept for at least five years after the client becomes eighteen years of age.

(b) This subsection applies to an LCDC in private practice using the internet or telephone to provide chemical dependency counseling services.

(1) The counselor must reside in and perform the services from Texas.

(2) The department maintains its authority to regulate the counselor regardless of the location of the client.

(3) The counselor is subject to the applicable laws of other states and countries where the client may reside or receive services by electronic means. Such laws may limit the counselor's practice.

(4) The counselor's provision of services by electronic medium must comply with Code of Federal Regulations, Title 42, Part 2 (relating to Confidentiality of Alcohol and Drug Abuse Patient Records), Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as applicable.

(5) The counselor must be able to verify the identification of the client and ensure the client's appropriate age.

(6) If a counselor uses the Internet as the electronic means by which counseling is provided or transfers data through the Internet, the counselor must comply with the following:

(A) data may only be transferred using at least a 128-encryption;

(B) e-mail communication is restricted relating to client information and documentation; and

(C) the counselor must provide technical backup for system problems by providing a phone number to the client to call for technical support and a contingency plan for the client when a technical problem occurs.

(7) The counselor must provide services using audio or video in real time.

(8) The counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The description must include:

(A) a grievance procedure and provide a link to the department for filing a complaint when using the Internet and the toll-free number for the department when counseling by telephone;

(B) the counselor's credentials, education level, and training;

(C) a link to the licensure verification page when using the Internet and the toll-free number for the department when counseling by telephone;

(D) the difference between electronic counseling and traditional counseling; and

(E) the potential risk regarding clinical issues, security and confidentiality.

(9) Services may only be offered by licensed chemical dependency counselors.

(10) The counselor must provide an emergency contact person and phone number and emergency procedures to the client in writing.

(c) This subsection applies to any person licensed, certified, or registered under this subchapter.

(1) A licensee shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(2) A licensee shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(3) A licensee shall:

(A) in addition to complying with any other applicable reporting requirements, promptly report to the department any suspected, alleged, or substantiated incidents of abuse, neglect, or exploitation committed by oneself or another licensee under this subchapter;

(B) unless otherwise prohibited by law, promptly report to the department violations of Texas Occupations Code, Chapter 504 (relating to Chemical Dependency Counselors), or rules adopted under the Act, including violations of this subchapter by oneself or another licensee;

(C) recognize the limitations of the licensee's ability and shall not offer services outside the licensee's scope of practice or licensure or use techniques that exceed the person's license authorization or professional competence. In the course of treating the substance abuse/dependence issues of a client, the licensee may independently address family issues, co-occurring mental health issues and physical and sexual abuse issues of a client if the counselor demonstrates:

(i) 45 hours of education in each area; and

(ii) 2,000 hours of clinically supervised post-licensure work experience by a qualified professional; and

(D) make every effort to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(4) A licensee shall not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(5) A licensee shall uphold the law and refrain from unprofessional and unethical conduct. In so doing, the licensee shall:

(A) comply with all applicable laws, regulations, and orders;

(B) not make any claim, directly or by implication, that the person possesses professional qualifications, licensure, or affiliations that the person does not possess;

(C) include, as applicable, their current credentials when signing all professional documents;

(D) not mislead or deceive the public or any person; and

(E) refrain from any act that might tend to discredit the license or profession.

(6) A licensee shall:

(A) report information fairly, professionally, and accurately to clients, other professionals, the department, and the general public;

(B) maintain complete, accurate, and appropriate documentation of services provided;

(C) not submit or cause or allow to be submitted to a client or third party payer a bill for services that were not provided or were improper, unreasonable, or medically or clinically unnecessary, with the exception of a missed appointment for which notice has been given that a charge will be assessed, and as permitted by law concerning third party billing; and

(D) provide responsible and objective training and supervision to interns and subordinates under the LCDC, CCS, or CTI's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(7) In any publication, a licensee shall give written credit to all persons or works that have contributed to or directly influenced the publication.

(8) Licensees shall respect a client's dignity, and shall not engage in, or permit their employees or supervisees to engage in, any action that may injure the welfare of any client or person to whom the licensee is providing services. The licensee shall:

(A) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(B) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(C) not engage in any activity that could be considered a professional conflict, and shall immediately remove oneself from such a conflict if one occurs;

(D) terminate any professional relationship or counseling services that are not beneficial, or are in any way detrimental to the client;

(E) always act in the best interest of the client;

(F) not abuse, neglect, or exploit a client;

(G) not engage in a sexual, personal, or business relationship with a client or a member of the client's immediate family (including any client receiving services from the licensee's employer) for at least two years after the client's services end;

(H) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided;

(I) not offer or provide chemical dependency counseling, supervision, or related services, nor meet with a client, in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling; and

(J) refrain from using any method or engaging in any conduct that could be considered coercive or degrading to the client or another, including, without limitation, threats, negative labeling, or attempts to provoke shame or humiliation.

(9) A licensee shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensee shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(A) inform the client, and obtain the client's consent, before tape-recording the client or allowing another person to observe or monitor the client;

(B) ensure the security of client records;

(C) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case, to the extent authorized by law;

(D) avoid invasion of the privacy of the client;

(E) provide the client his/her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect the client's confidentiality; and

(F) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(10) A licensee shall inform the client about all relevant and important aspects of the professional relationship between the client and the licensee, and shall:

(A) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances that might influence the professional relationship;

(B) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(C) not establish a personal relationship with any client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end;

(D) neither engage in any type or form of romantic or sexual behavior with a client (including any individual receiving services from the licensee's employer) for at least two years after the client's services end nor accept as a client anyone with whom they have engaged in romantic or sexual behavior; and

(E) not exploit relationships with clients for personal gain.

(11) A licensee shall treat other professionals with respect, courtesy, and fairness, and shall:

(A) refrain from providing or offering professional services to a client who is receiving chemical dependency treatment and/or counseling services from another professional, except with the knowledge of the other professional and the consent of the client, until treatment and/or counseling services with the other professional ends;

(B) cooperate with the department, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information, unless prohibited by law; and

(C) ensure that the person's actions in no way exploit relationships with supervisees, employees, students, research participants or volunteers.

(12) Prior to providing treatment and/or counseling or substance abuse services, a licensee shall inform the client of the licensee's fee schedule and establish financial arrangements with a client. The counselor shall not:

(A) charge exorbitant or unreasonable fees for any service;

(B) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for services;

(C) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for services provided; or

(D) accept a private professional fee or any gift or gratuity from a client if the client's services are paid for by another funding source, or if the client is receiving treatment from a facility where the licensee provides services (unless all parties agree to the arrangement in writing).

§140.425. Disciplinary Actions.

(a) The provisions of this section shall apply to all types of licensees under this subchapter, notwithstanding the provisions of §442.103 of this title (relating to Procedure for Contested Cases for Counselor and Facility Licenses), and shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, under §140.430 of this title (relating to Criminal History Standards), or as otherwise authorized by applicable statute or rule.

(b) The department may take action as authorized under subsection (c) of this section if an applicant for, or holder of, a license, registration, or certification issued under this subchapter:

(1) violates or assists another to violate the Act, a rule under this subchapter, or an Order issued under the Act or this subchapter's rules;

(2) circumvents or attempts to circumvent the Act or a rule under this subchapter;

(3) directly or indirectly participates in a plan to evade the Act or a rule under this subchapter;

(4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department determines would constitute a violation of the Act or a rule under this subchapter;

(5) engages in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required by law;

(8) refuses to perform an act or service the person is licensed to perform under this subchapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) commits an act for which liability exists under Civil Practice and Remedies Code, Chapter 81 (Relating to Sexual Exploitation By Mental Health Services Provider).

(c) Where grounds exist to take action against a person, against a license, certification, or registration issued under this subchapter, or against an applicant or holder of a license, certification, or registration issued under this subchapter, the department may:

(1) deny, refuse to issue, or refuse to renew a license, certification, or registration;

(2) revoke or suspend a license, certification, or registration;

(3) probate a suspension of a license, certification, or registration;

(4) impose an administrative penalty against a person who violates the Act or a rule under this subchapter; or

(5) issue a reprimand against the applicable license holder.

(d) The department will determine the length of the probation or suspension. If the department probates the suspension of a license, certification, or registration, the department may require the holder of the applicable license to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) complete additional educational requirements, as required by the department to address the areas of concern that are the basis of the probation.

(e) An individual whose license, registration, or certification is revoked under this subchapter is not eligible to apply for a license, registration, or certification under this subchapter for a minimum of two years after the date of revocation. The department may consider the findings that resulted in revocation and any other relevant facts in determining whether to deny the application under this section, or as otherwise permitted by law, if an otherwise complete and sufficient application for a license, registration, or certification is submitted after two years have elapsed since revocation.

(f) A voluntary surrender accepted by the department in response to a complaint under §140.428 of this title (relating to Voluntary Surrender of License, Certification, or Registration In Response to a Complaint) shall be deemed to be the result of a formal disciplinary action as provided for in that section.

(g) The department, upon determination that grounds may exist to take disciplinary action, shall issue a notice of violation notifying the respondent of the proposed action.

(1) The notice letter shall be sent via regular first-class and certified mail to the respondent's address of record.

(2) The notice shall specify:

(A) the statutes, rules, or orders allegedly violated;

(B) the factual basis of the alleged violations;

(C) the disciplinary action the department intends to take; and

(D) notice of an opportunity for a hearing to be held under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) If the department is proposing to assess an administrative penalty, the letter shall also inform the respondent of the amount of the proposed penalty and of the opportunity for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) The letter shall also include the following notices:

(A) If the respondent does not request a hearing on or before the 20th day after notice is effective, the allegations will be deemed true and the department will issue a default final order implementing the proposed action.

(B) If the respondent requests a hearing but fails to appear at the scheduled hearing, the allegations will be deemed true and the State Office of Administrative Hearings will recommend a default proposal for decision to implement the proposed action.

(C) Notice is effective three days after the date of mailing.

(h) A respondent must submit a timely written request for a hearing to avoid having the allegations in the notice letter deemed true and a default order implementing the proposed action issued by the department. The request for hearing is timely if filed with the department or postmarked on or before the 20th day after the notice is effective. If the respondent fails to timely file a request for a hearing, the factual allegations of the notice letter may be deemed true and shall form the basis of a default final order by the department making findings of fact and conclusions of law consistent with the notice of violation, and implementing the proposed action.

(i) The department shall implement a final order to suspend a license issued under this subchapter for failure to pay child support as provided by the Texas Family Code, Chapter 232.

§140.430. Criminal History Standards.

(a) The department reviews the criminal history of each applicant for initial licensure, certification, and registration. Reviews are also conducted when the department receives information that a licensee has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(b) An applicant shall disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions. Failure to make full and accurate disclosure may be grounds for application denial or disciplinary action, including revocation, against the applicant for, or holder of, a license, registration, or certification.

(c) The department obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) For purposes of this section, the department has identified the following offenses as offenses directly related to the duties and responsibilities of the licenses, certifications, and registrations issued under this subchapter, and has categorized them according to the seriousness of the offense. The provisions of this section shall not limit the authority of the department to take any other action against a license, registration, or certification, or the holder of, or applicant for, a license, registration, or certification, as otherwise authorized by applicable statute or rule.

(1) Category X includes:

(A) capital offenses;

(B) sexual offenses involving a child victim;

(C) felony sexual offenses involving an adult victim who is a client (one or more counts);

(D) multiple counts of felony sexual offenses involving any adult victim; and

(E) homicide 1st degree.

(2) Category I includes:

(A) kidnapping;

(B) arson;

(C) homicide lesser degrees;

(D) felony sexual offenses involving an adult victim who is not a client (single count); and

(E) attempting to commit crimes in Category I or X.

(3) Category II includes felony offenses that are not listed separately in this section and that result in actual or potential physical harm to others and/or animals.

(4) Category III includes:

(A) class A misdemeanor alcohol and drug offenses;

(B) class A misdemeanor offenses resulting in actual or potential physical harm to others or animals;

(C) felony alcohol and drug offenses; and

(D) all other felony offenses not listed separately in this section.

(5) Category IV includes:

(A) class B misdemeanor alcohol and drug offenses; and

(B) class B misdemeanor offenses resulting in actual or potential physical harm to others or animals.

(e) Except as provided in subsection (j) of this section, the department shall deny the initial or renewal licensure, certification, or registration application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) category X offense during the person's lifetime;

(2) category I offense during the 15 years preceding the date of application;

(3) category II offense during the ten years preceding the date of application;

(4) category III offense during the seven years preceding the date of application; or

(5) category IV offense during the five years preceding the date of application.

(f) The department shall deny the initial or renewal license, certification, or registration application of a person who has been found to be incapacitated by a court on the basis of a mental defect or disease.

(g) When a person's application is denied under subsection (e) or (f) of this section, the person may reapply when:

(1) the person receives a full pardon based on the person's wrongful conviction;

(2) the timeframes established in subsection (e) of this section have been met; or

(3) the person who had been found to be incapacitated is found to be no longer incapacitated, in which case the provisions of this section applicable to the status of the charge and prosecution at that time will apply.

(h) The department shall suspend a license, certification, or registration if the department receives written notice from the Texas Department of Public Safety or another law enforcement agency that the individual has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section. The licensee will remain subject to applicable renewal requirements during the period of suspension. An application to renew any form of license suspended under this subsection will be subject to the denial and exception provisions as stated in subsection (e) of this section, to the extent applicable at the time of renewal application. If subsection (e) of this section does not apply, the applicant is otherwise eligible for renewal, and the applicant is still subject to summary suspension under this subsection, the applicable license will remain suspended under this subsection upon renewal, and until paragraph (2) of this subsection or subsection (e) of this section becomes applicable.

(1) The department shall send notice stating the grounds for summary suspension by certified mail to the license, certification, or registration holder at the address listed in the department's records. The suspension is effective three days after the date of mailing.

(2) If no other bar to licensure, certification, or registration exists at the time, the department will restore the person's license, certification, or registration upon receipt of official documentation that the charges have been dismissed or the person has been acquitted, except that, where the dismissal follows a deferred adjudication, the time frames set forth in subsection (e) of this section will apply.

(i) The department will defer action on the application of a person who has been charged or indicted for an offense described in subsection (d) of this section. If the person is convicted or placed on community supervision for the offense, subsection (e) of this section will apply. If the charges are dismissed or the person is acquitted, the application will be processed without adverse action under this section on the basis of those charges. However, the department may consider the facts and evidence underlying the charge in determining whether adverse action against the applicant might be warranted under §140.425 of this title (relating to Disciplinary Actions).

(j) Notwithstanding subsection (e) of this section, if no other bar to LCDC initial licensure or renewal exists at the time, the department may issue or renew an LCDC license to a person convicted or placed on community supervision in any jurisdiction, within the timeframes set forth in subsection (e) of this section, for a drug or alcohol offense described in subsection (d) of this section, if the department determines that the individual has successfully completed participation in a peer assistance program approved by the department. When an LCDC licensure or renewal applicant successfully reaches the re-entry phase of a peer assistance program, the department may grant a temporary "re-entry approval," with a limited term and any appropriate conditions, set in conjunction with the peer assistance program, based upon the applicant's needs and the anticipated length of the re-entry phase of the peer assistance program for the applicant. At the end of the term of the re-entry approval, the department may extend the term if the applicant is still successfully participating in the re-entry phase of the peer assistance program, may grant an LCDC license or renewal license if the department determines that the LCDC has successfully completed the peer assistance program, or shall deny the license under subsection (e) of this section, if the LCDC has failed to successfully complete the peer assistance program.

(k) A person whose license, certification, or registration has been denied or suspended under this section may only appeal the action if:

(1) the person was convicted or placed on community supervision; and

(2) the appeal is based on the grounds that the timeframes defined in subsection (e) of this section have been met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2008.

TRD-200804518
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 9, 2008
Proposal publication date: March 7, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.132

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §157.132, concerning the disbursement of funds for uncompensated trauma care and emergency medical services (EMS), generated by photographic traffic signal enforcement without changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4109) and the section will not be republished.

BACKGROUND AND PURPOSE

The new rule is necessary to comply with Senate Bill 1119, 80th Legislature, 2007, which added Health and Safety Code, Chapter 782, and requires the Executive Commissioner to use money appropriated from the regional trauma account that was created as a dedicated account in the general revenue fund of the state treasury as a result of the implementation of a photographic traffic signal enforcement system and the use of a percentage of the monies collected to help fund trauma facilities and EMS to fund uncompensated care provided by designated trauma facilities and county and regional EMS located in the area served by the trauma service area (TSA) regional advisory council (RAC) that serves the local authority submitting money.

SECTION-BY-SECTION SUMMARY

The new rule describes the formula for disbursement of monies for designated trauma facilities, EMS providers, and RACs that serve the local authority submitting the money under Transportation Code, §707.008. The Regional Trauma Account is a dedicated account in the general revenue fund of the state treasury. In any fiscal year, 96% of the money is appropriated from the Regional Trauma Account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department; 2% of the money is appropriated from the Regional Trauma Account for county and regional EMS; 1% of the money is appropriated from the Regional Trauma Account for distribution to the 22 TSA RACs; and 1% of the money is appropriated from the Regional Trauma Account to fund administrative costs of the Health and Human Services Commission.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2008.

TRD-200804528
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 10, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 450. COUNSELOR LICENSURE

25 TAC §§450.100 - 450.126

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§450.100 - 450.126, concerning the licensing and regulation of chemical dependency counselors. The repeals are adopted without changes to the proposed text as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1990) and the sections will not be republished.

BACKGROUND AND PURPOSE

The repeals are necessary to implement amendments to Occupations Code, Chapter 504, made by Senate Bill (SB) 155, which was enacted by the 80th Legislature, Regular Session, 2007. New and amended rule provisions implementing SB 155 include provisions relating to the approval of peer assistance programs, the certification of clinical supervisors, modifications to the continuing education requirement for renewal of the licensed chemical dependency counselor (LCDC) license, the recognition of other certifications on the LCDC license, and ensuring that all persons now licensed, registered, or certified under Occupations Code, Chapter 504, are subject to the same extent to disciplinary action and to the criminal history standards developed under Chapter 504. The repeal and new rules consolidate existing Professional Licensing and Certification Unit program rules into 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 450.100 - 450.126 have been reviewed and the department has determined that, except as amended under the proposed new rules, as further described in this preamble, the reasons for adopting the sections continue to exist because rules on this subject are needed. However, the department is repealing the existing sections and adopting the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

The repeal of §§450.100 - 450.126 is necessary in order to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed repeals during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized by Occupations Code, §504.051, which authorizes rulemaking necessary to carry out the duties established under Occupations Code, Chapter 504, the establishment of standards of conduct and ethics for Chapter 504 licensees, and the establishment of additional criteria for peer assistance programs for chemical dependency counselors; Occupations Code, §504.053, which authorizes the Executive Commissioner of the Health and Human Services Commission to set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering Chapter 504; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2008.

TRD-200804519
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 9, 2008
Proposal publication date: March 7, 2008
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §11.1 and §11.3 with changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4123) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 3560, 80th Legislature, 2007, relates to the transfer of the powers and duties of the Texas Building and Procurement Commission to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. This rule is necessary to update the Texas Commission on Environmental Quality rules to reflect this transfer of responsibilities.

SECTION BY SECTION DISCUSSION

Administrative changes are adopted throughout the rules to be consistent with Texas Register requirements and agency guidelines.

The adopted amendment to §11.1, Historically Underutilized Business Program and §11.3, Bid Opening and Tabulation, changes the name of the referenced agency from the Texas Building and Procurement Commission to Texas Comptroller of Public Accounts, Texas Procurement and Support Services.

In adopted §11.1, the opening paragraph relating to the commission adopting by reference the rules of the Texas Comptroller of Public Accounts is now designated as subsection (a) and an old *Texas Register* reference was removed and replaced with the effective date and publication reference of the transfer to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. Added is subsection (b) that references Texas Government Code, §2161.003.

In adopted §11.3(a), references to 1 TAC §113.5(b) and an old Texas Register citation are deleted and replaced with the effective date and publication reference of the transfer to the Texas Comptroller of Public Accounts, Texas Procurement and Support Services. Adopted subsection (c), relating to the location of copies of the rule, is removed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the adopted rulemaking is to implement HB 3560 and to update agency names and references to the rules. The changes are not expressly to protect the environment and reduce risks to human health and the environment.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to implement legislation and to update agency names and correct references to rules. The adopted rules will substantially advance this stated purpose. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and no comments were received.

PUBLIC COMMENT

An opportunity to provide public comment was offered at a public hearing in Austin on June 16, 2008. The comment period closed on June 23, 2008. No oral or written comments were received.

SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

30 TAC §11.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The adopted amendment implements House Bill 3560, 80th Legislature, 2007.

§11.1. Historically Underutilized Business Program.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services in 34 TAC §§20.11 - 20.22 and §§20.26 - 20.28 (relating to Historically Underutilized Business Program), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).

(b) The adoption of this rule is required by Texas Government Code, §2161.003, 76th Legislature, 1999.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

TRD-200804529
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Effective date: September 11, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 239-2548

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SUBCHAPTER C. BID OPENING AND TABULATION

30 TAC §11.3

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas, including TCEQ general rulemaking authority under Texas Health and Safety Code, §382.017.

The adopted amendment implements House Bill 3560, 80th Legislature, 2007.

§11.3. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services in 34 TAC §20.35(b) (relating to Bid Submission, Bid Opening, and Tabulation), transferred effective September 1, 2007, as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4237).

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d), 75th Legislature, 1997.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Effective date: September 11, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 239-2548

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CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE TECHNICIANS, AND SITE EVALUATORS

30 TAC §§30.231, 30.240, 30.242, 30.245, 30.247

The Texas Commission on Environmental Quality (commission) adopts amendments to §§30.231, 30.240, 30.242, 30.245, and 30.247 *with changes* to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2776) and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement requirements in House Bill (HB) 2482, 80th Legislature, 2007, relating to persons who service or maintain on-site sewage disposal systems using aerobic treatment. HB 2482 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This adoption addresses the revisions to Chapter 30.

The commission administers the On-Site Sewage Facility (OSSF) Program that currently includes executive director delegation of OSSF authority to Counties, Municipalities, and River Authorities. The commission administers the Occupational Licensing and Registration Program for issuances of licenses and registrations required to perform OSSF-related work.

The adopted rules revise existing requirements for the general public, installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives.

The adopted rules further define the commission's regulations regarding licensing and registration of individuals who service or maintain OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. One purpose in the statute is to allow the commission to develop and implement a new program to register maintenance providers.

The adopted rules specify requirements for maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. Additionally, significant revisions in these rules include the license creation for maintenance providers and creating a new category of registration for maintenance technicians.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, August 2006.

Subchapter G: On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators

The adopted amendment to Subchapter G, On-site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators, revises the current title to include Maintenance Technicians.

The adopted amendment to §30.231, Purpose and Applicability, creates a licensing requirement for maintenance providers and registration requirements for maintenance technicians under the section. The adopted amendment eliminates the September 1, 2008 transitional deadline for becoming a registered maintenance provider under a Wastewater D license because a Wastewater D license would no longer qualify for licensing under the adopted maintenance provider requirements. This adopted amendment provides for a one-year period for maintenance providers to transition to a new license or registration and allows time for other individuals to obtain a maintenance provider license or maintenance technician registration. Finally, §30.231(a)(5) was amended to specify licensure for maintenance providers.

The adopted amendment to §30.240, Qualifications for Initial License, allows a certified professional soil scientist to obtain a site evaluator license. This amendment also adds new licensing requirements for a maintenance provider. Section 30.240(e)(2) was amended to provide for a pro rata reduction in the license fee during the transitional period between a current registration and new licensure, §30.240(e)(5) was amended to specify the examination for licensure as a maintenance provider, and §30.240(e)(7) was added to provide an exemption for completing the advanced maintenance provider course and passing the maintenance provider licensing examination for those maintenance provider applicants who held a current maintenance provider registration on the effective date of these rules and meet all the other requirements of this section.

The adopted amendment to §30.242, Qualifications for License Renewal, adds requirements for renewing a maintenance provider's license and exempts any Installer II or designated representative from maintaining those licenses in order to renew a site evaluator's license.

The adopted amendment to §30.245, Registration of Apprentices, is re-titled as "Registration of Apprentices and Maintenance Technicians" and provides requirements for registration as a maintenance technician and was amended to define a maintenance technician as an individual who maintains OSSFs for compensation and is not a licensed maintenance provider. It also holds the apprentice responsible for the three-year registration renewal.

The adopted amendment to §30.247 revises requirements for registering maintenance providers and §30.247(2)(a) was amended to be consistent with current requirements for completing the basic maintenance provider coursework.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code (TGC), §2001.001 *et. seq.*, and determined that the adopted rules are not subject to TGC, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in TGC, §2001.0225(g)(3). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, of the public health and safety of the state or a sector of the state. The intent of the adopted rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents and designated representatives. Protection of human health and the environment may be a by-product of these adopted rules, but it is not the specific intent of the rules. Further, these adopted rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These adopted rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives. Similarly, these adopted rules are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these adopted rules do not meet the definition of "a major environmental rule" as defined in TGC, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these adopted rules do not meet any of the four applicability requirements listed in TGC, §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rules do not exceed a federal standard because there are no federal standards regulating on-site sewage facilities. The adopted rules do not exceed state law requirements because these rules are required by HB 2482. Also, the adopted rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an

agency or representative of the federal government to implement a state and federal program regarding on-site sewage facilities. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency. Therefore, Texas Government Code, §2001.0225 is not applicable to these adopted rules. The commission invited but received no comments regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under TGC, Chapter 2007. The intent of these adopted rules is to revise existing licensing and registration requirements for persons who service or maintain on-site sewage disposal systems using aerobic treatment: installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents, and designated representatives. Promulgation and enforcement of these adopted rules would be neither a constitutional nor a statutory taking of private real property. Specifically, the subject adopted regulations would not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules do not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program. No comments were received concerning the Texas Coastal Management Plan.

PUBLIC COMMENTS

An opportunity to provide public comment was offered at a public hearing scheduled in Austin on April 29, 2008. The comment period closed on May 5, 2008.

The commission received 22 written comments concerning the proposed rules. Comments were received from BaCorp, Cedar Hill Backhoe, Ecological Tanks, Inc., Grimes County Environmental, Heart of Texas Chapter of the Texas On-Site Wastewater Association (HTCTOWA) submitted with 14 signatures, Koller & Son Septic Service, Parker County Health Department, Swinscoe's Septic Service, the Texas On-Site Wastewater Association (TOWA), Woodard's Septic Service, Inc., and 19 individuals. The commission also received over 250 form letters from members of TOWA. Additionally, seven oral comments concerning these rules were offered during the April 29, 2008 public hearing.

RESPONSE TO COMMENTS

General Comments

BaCorp commented that a homeowner will not understand the requirements for maintenance provider licensing until problems occur and that there will be a loss in professionalism.

The commission acknowledges the comment and responds that while some homeowners may not understand the licensing requirements for maintenance providers, BaCorp did not provide specific examples or details on how professionalism in the maintenance industry would decline. No changes were made in response to this comment.

One individual commented that maintenance providers should buy an existing business or attend at least 40 hours of training relating to providing aerobic treatment unit (ATU) maintenance.

The commission responds that purchasing an existing ATU maintenance business does not necessarily substitute for adequate aerobic system training. While the commission agrees that training is integral to proper ATU maintenance, the most significant training occurs in the field when troubleshooting ATU problems. No changes were made in response to this comment.

One individual commented that the named-member workgroup should be permanent.

The commission responds that the executive director plans to pursue creation of a workgoup to assist in future rulemaking and will consider membership terms at that time. No changes were made in response to this comment.

Koller & Sons Septic Service commented that the cards issued for maintenance providers currently state license and asked if the commission is capable of issuing the correct certificate.

The commission responds that replacement cards have been issued to all registered maintenance providers with the term "registration" instead of "license" to eliminate any confusion. No changes were made in response to this comment.

One individual commented that all Installer I licensees and licensed maintenance providers should be moved to the same laws that cover plumbers and electricians.

The commission responds that this would require a statutory change and is beyond the scope of this rulemaking. No changes were made in response to this comment.

One individual commented that the rule process is confusing in that different commission representatives gave conflicting information about the rules when asked. This individual also requested that the commission keep its responses consistent so it can add credibility to the process.

The commission responds that the purpose of publishing the rules in the *Texas Register* is to ensure they are made available to anyone wishing to review them and to also ensure the same set of rules are being reviewed so that there will not be any misunderstanding concerning what is in the rules. No changes were made in response to this comment.

One individual commented that the commission does not pursue and enforce against licensees who violate the law.

The commission disagrees with this statement and responds that both the local Authorized Agents and the commission enforce against violators. The Authorized Agents issue notices of violations and pursue enforcement through the local courts when warranted. The commission also pursues violators and initiates formal enforcement when warranted. The initial efforts are to seek compliance and pursue enforcement only when necessary. No changes were made in response to this comment.

Specific comments

Ecological Tanks, Inc., HTCTOWA, Swinscoe Septic Service, TOWA, and nine individuals commented that those holding an existing maintenance provider registration are sufficiently trained and should not be subject to the new requirements for licens-

ing maintenance providers. Koller & Son Septic Service asked if it was in the best interest of the state that a new program be implemented which may lower the number of maintenance providers. The Parker County Health Department commented that additional registration is excessive and that the original program should be left in place. One individual commented that they had followed all of the requirements for registration and was not in favor of the new licensing program because of the additional cost and time and that the new licensing program is a ploy to bleed licensees of more money. This individual also commented that they are a micro-business and cannot absorb the additional licensing costs.

The commission responds that HB 2482 specifically eliminated the existing maintenance program and allowed the commission to develop a new program to register maintenance providers. While there are additional costs related to the new rules regarding registration and licensing, these costs are intended to be minimized by exempting some licensees and the transfer of registration from maintenance providers to maintenance technicians at no cost to the registrant. No changes were made in response to this comment.

TOWA commented that while they support the need for a licensed maintenance provider, current Installer II and Wastewater C licensees should not have to take an advanced course and examination to obtain a maintenance provider license. Koller & Son Septic Service commented that current licensees should not have to take an advanced course and examination to obtain a maintenance provider license. Three individuals commented that a licensee with significant experience, including manufacturer's certification, should be grandfathered. One individual commented that while he is licensed to operate the largest wastewater treatment plant, he must re-test and be certified for a 500 gallon per day treatment plant.

The commission agrees that individuals who meet the requirements of §30.240(e) and who held a current maintenance provider registration on the effective date of these rules should be exempt from the requirement for completing an advanced aerobic course and passing the maintenance provider licensure examination, provided that they meet the remaining requirements for licensure as a maintenance provider. As a result, §30.240(e)(7) has been added to allow an exemption for maintenance providers from taking the advanced aerobic maintenance course and licensing examination provided that they meet all of the other maintenance provider licensing requirements as of the effective date of these rules.

One individual commented that Wastewater D licensees with a manufacturer's certification and a minimum of two years experience should be grandfathered.

The commission responds that HB 2510 (79th Legislature, 2005) removed the ability for a Wastewater D licensee to become a maintenance provider. While the commission allowed a two-year phase-out of this licensee to become a maintenance provider, HB 2482 (80th Legislature, 2007) did not reinstate Wastewater D licensees as eligible for registration as a maintenance provider. No changes were made in response to this comment.

Cedar Hill Backhoe commented that they are not opposed to additional training as long as continuing education unit (CEU) credit is included. Ecological Tanks, Inc. commented that the commission should require advanced training for those not currently licensed and that these advanced training classes should count towards the eight hours of continuing education required for maintaining OSSF licenses.

The commission agrees that CEU credit be given for this training, as currently allowed for all other license training. No changes were made in response to this comment.

Members of TOWA commented that they support the creation of a new 16-hour class for the maintenance provider license only for those who do not hold a current Wastewater C or Installer II license.

The commission responds that there are no specifics in the adopted rules as to the time required for the advance maintenance provider license course and implementing this comment would only affect maintenance technicians with three years of experience who apply for licensure. The commission responds that the advanced course is intended for all applicants not meeting the exemption in §30.240(e)(7). No changes were made in response to this comment.

One individual commented that the new maintenance provider licensing program will hurt the homeowner because the maintenance provider won't be in the business long enough to get the necessary experience. Two individuals commented that new maintenance providers will not have the proper experience and training and one of these individuals commented that new maintenance providers will have bids that are unrealistically low and will make it more difficult for the reputable maintenance providers to stay in business. One individual commented that an applicant for a maintenance provider license should have a minimum of three years experience.

The commission responds that the requirements for licensing include either: Installer II license, a Wastewater C license or three years experience as a maintenance provider, as found in §30.240(e) and that these requirements, including competition between maintenance companies, and mandatory continuing education should help assure proper training. No changes were made in response to this comment.

Two individuals commented that the additional coursework will cause maintenance providers to pass on the cost to their customers, which they cannot do without losing maintenance contracts.

The commission responds that it has no ability to regulate maintenance costs in contracts between maintenance providers and its customers. No changes were made in response to this comment.

One individual commented that the advanced course and examination should be for those who did not currently have manufacturer certification. Additionally, this individual commented that the advanced course and examination should be difficult because the rule removed the manufacturer's certification.

The commission responds that the advanced course is intended for all applicants who do not meet the requirements for exemption on the effective date of these rules, as described in §30.240(e)(7). No changes were made in response to this comment.

One individual commented that adequate maintenance training will be sufficient if the state has adequate training programs in place.

The commission agrees with this comment. No changes were made in response to this comment.

Grimes County Environmental commented that if Designated Representatives (DRs) are not allowed to perform work in other jurisdictions, then DRs should not have to pay renewal fees as a DR if the commission does not allow DRs to work in other jurisdictions.

The commission responds that a DR license can only be used for performing regulatory OSSF work on behalf of the authorized agent work in their area(s) of jurisdiction. The purpose of licensing and registration fees for all licensing programs is to implement those licensing programs. No changes were made in response to these comments.

STATUTORY AUTHORITY

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also adopted under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. Finally, these amendments are adopted under Texas Health and Safety Code (THSC), §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; and THSC, §366.071, concerning Occupational Licensing and Registration.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 37.001 - 37.015; and THSC, §§366.011, 366.012, and 366.071.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

(1) constructs any part of an on-site sewage facility;

(2) performs the duties of a designated representative;

(3) performs the duties of a site evaluator;

(4) performs the duties of an apprentice;

(5) performs the duties of a licensed maintenance provider; or

(6) performs the duties of a maintenance technician.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

(c) A person that holds a current maintenance provider registration that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance provider duties until August 31, 2009. Effective September 1, 2009, those individuals shall either hold a:

(1) maintenance provider license; or

(2) maintenance technician registration.

(d) Effective September 1, 2009, all current maintenance provider registrations will be converted to maintenance technician registrations.

(e) Individuals renewing their maintenance provider registration after April 30, 2009 will be issued a maintenance technician registration or may apply for a maintenance provider license, provided they meet the qualifications for the initial license of a maintenance provider.

(f) No applications for maintenance provider registrations will be accepted after April 30, 2009.

§30.240. Qualifications for Initial License.

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an apprentice registration for at least two years; or

(C) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the applicant's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the applicant and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) to document experience as an Installer I, the applicant shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related by blood or marriage to the applicant or applicant's spouse;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the applicant; or

(iii) other documentation of the applicant's work experience, approved by the executive director;

(B) to document experience as an apprentice, the applicant shall submit either:

(i) a sworn statement from the installer for whom the applicant performed construction services;

(ii) a sworn statement from a designated representative who witnessed the applicant working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter; and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, certified professional soil scientist, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

(e) Effective September 1, 2009, a maintenance provider must be licensed with the executive director. To obtain a maintenance provider license, a person must:

(1) meet the requirements of Subchapter A of this chapter;

(2) submit a completed application and a $111 fee to the executive director on a form approved by the executive director. Applicants with a current maintenance provider registration will be given a pro rata reduction in the $111 fee toward the maintenance provider license for the unexpired term of their registration;

(3) submit verification that the applicant holds a current Installer II, Class C (or higher) Wastewater license or acceptable documentation of three years experience as a maintenance technician. Registered maintenance provider experience obtained prior to the effective date of these rules may be applied towards the three years of experience as a maintenance technician; and

(4) successfully complete agency-approved courses in basic maintenance and advanced aerobic wastewater treatment related to residential proprietary aerobic treatment units. Advanced aerobic wastewater treatment courses must have been approved after September 1, 2008;

(5) pass the maintenance provider licensing examination;

(6) any additional information required by the executive director; and

(7) Exemption. Maintenance provider license applicants who obtained a maintenance provider registration prior to the effective date of these rules, hold a current maintenance provider registration, and meet all of the other provisions of this chapter for licensing as a maintenance provider on the effective date of these rules are exempt from the requirements for completion of the agency-approved advanced aerobic wastewater treatment course and the maintenance provider licensing examination.

§30.242. Qualifications for License Renewal.

(a) To renew an Installer I, Installer II, designated representative, maintenance provider, or site evaluator license, an individual must have:

(1) met the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) completed a minimum of 24 hours of approved training credits.

(b) In addition to the requirements in subsection (a) of this section, an individual renewing a license for site evaluator shall demonstrate possession of a current license specified in §30.240(d)(2)(C) of this title (relating to Qualifications for Initial License) except for individuals who were granted a site evaluator license on the basis of holding either an Installer II or designated representative license.

(c) For the renewal of a maintenance provider license, the individual is not required to hold a current Installer II or Wastewater C license, but must meet all the requirements in subsection (a) of this section.

§30.245. Registration of Apprentices and Maintenance Technicians.

(a) Apprentice. An individual who enters into an apprenticeship under the supervision of a licensed on-site sewage facility (OSSF) installer shall be registered with the executive director.

(1) Application. An application for registration shall be made on a standard form provided by the executive director. The completed application and a $111 fee must be submitted to the executive director.

(2) Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation).

(3) Expiration. The apprentice registration will expire three years after the issuance date of the registration.

(4) An apprentice's registration may not be renewed if:

(A) the registration has been expired for more than 30 days;

(B) the registration has been revoked; or

(C) the apprentice has obtained an installer license.

(5) An apprentice whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The apprentice will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

(b) Maintenance technician. An individual who maintains OSSFs for compensation and is not a licensed maintenance provider shall be registered with the executive director as a maintenance technician. A maintenance technician shall have successfully completed an agency-approved course in basic maintenance provider training.

(1) Application. An application for registration shall be made on a standard form provided by the executive director. The completed application and a $111 fee must be submitted to the executive director.

(2) Notification. After verifying that the requirements for registration have been met, the executive director shall mail the registration certificate no later than 45 days after the effective date of the registration. An individual's application may be denied according to §30.33 of this title.

(3) Expiration or termination. The maintenance technician's registration will expire three years after the issuance date of the registration.

(4) A maintenance technician's registration may not be renewed if:

(A) the registration has been expired for more than 30 days;

(B) the registration has been revoked; or

(C) the registration has been replaced by a higher class of license.

(5) A maintenance technician whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the registration expiration date of the current registration, must submit a new application with the appropriate fee. The maintenance technician will be assigned a new registration number and date, but will not lose any experience gained under the previous registration.

§30.247. Registration of Maintenance Providers.

The following provisions shall be effective only through April 30, 2009. No new maintenance provider registration applications will be accepted after April 30, 2009.

(1) A maintenance provider must be registered with the executive director.

(2) To register as required by Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), a person must:

(A) meet the requirements of Subchapter A of this chapter and successfully complete an agency-approved course in basic maintenance provider training;

(B) submit a completed application and a $111 fee to the executive director on a form approved by the executive director; and,

(C) any additional information required by the executive director.

(3) To renew a maintenance-provider registration, a maintenance provider must:

(A) meet the requirements in Subchapter A of this chapter; and

(B) submit a completed renewal application and a $111 fee to the executive director on a form approved by the executive director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (commission) adopts amendments to §§285.2 - 285.5, 285.8, 285.13, 285.21, 285.30, 285.32 - 285.34, 285.50, 285.60 - 285.65, 285.70, 285.71, 285.90, and 285.91. The commission also adopts the repeal of §285.7 and new §285.7.

Sections 285.2 - 285.4, 285.7, 285.32, 285.34, 285.64, 285.65, 285.90, and 285.91 are adopted *with changes* to the text and will be republished. Sections 285.5, 285.8, 285.13, 285.21, 285.30, 285.33, 285.50, 285.60 - 285.63, 285.70, and 285.71 are adopted *without changes* to the proposed text as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2776) and will not be republished.

The commission withdraws the proposal to amend §285.6 as published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2776).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement requirements in House Bill (HB) 2482, 80th Legislature, 2007, for persons who service or maintain on-site sewage disposal systems using aerobic treatment. HB 2482 impacts two chapters within 30 TAC: Chapter 30, Occupational Licenses and Registrations, and Chapter 285, On-Site Sewage Facilities. This adoption addresses the revisions to Chapter 285.

This adoption also addresses a petition filed with the commission by the Texas Environmental Health Association (TEHA) asking that designated representatives (DRs) be prohibited from participating in on-site related work for compensation in areas beyond their jurisdiction.

Finally, this adopted rulemaking addresses a general revision to a number of different elements within Chapter 285. The elements affected by this adopted rulemaking include: On-site sewage facility (OSSF) site requirements for small lots; conditioning proposed permits; retesting protocol of proprietary disposal systems; specification for sewer pipe located between treatment and disposal units; flow equalization; authorized agent (AA) review of the executive director's findings; soil bore pit location reference in soil evaluation reports; structural requirements for septic tanks; minimum treatment effluent quality prior to entering any disposal system; defines limits for high strength wastewater; foundation sizing requirements; leak testing and water tightness requirements for OSSF tanks; OSSF testing and reporting; OSSF setback requirements; site evaluator requirements; Model Deed requirements; and non-substantive cleanup of errata and inconsistencies in the rules.

The commission administers the OSSF Program that currently includes executive director delegation of OSSF authority to counties, municipalities, special districts, and river authorities.

The adopted rules revise existing requirements for the general public, installers, all aerobic system maintenance providers, engineers, sanitarians, site evaluators, AA, and DRs.

The adopted rules further define the commission's regulations regarding servicing or maintenance of OSSFs using aerobic treatment under Texas Health and Safety Code (THSC), Chapter 366. One purpose in the statute is to allow homeowners to maintain their own aerobic systems without the need for training and reporting and to remove existing requirements for registering maintenance providers. It also allows the commission to

develop and implement a new program to register maintenance providers. In Fiscal Year 2006 alone, there were more than 37,000 newly permitted OSSFs in Texas.

The adopted rules specify requirements for maintenance providers to obtain an occupational license to perform service and maintenance of on-site sewage disposal systems using aerobic treatment. Additionally, the rules create a new registration category for maintenance technicians.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, August 2006.

Subchapter A - General Provisions

The commission has withdrawn all proposed amendments to the definition for §285.2(10), Cluster Systems, and the current definition remains in effect.

The adopted amendment to §285.2(19), expands the definition of direct supervision to include the working relationship between maintenance providers and maintenance technicians.

The adopted amendment to §285.2(36), eliminates the definition of a maintenance company, and renumbers the definition of maintenance findings from paragraph (37) to (36).

The adopted amendment to §285.2(37), creates a new definition for maintenance provider and renumbers the definition for maintenance findings to §285.2(36).

The adopted amendment to §285.2(38), creates a new definition for maintenance technician which facilitates the provisions within Chapter 30 for registering individuals who maintain aerobic systems under the supervision of a maintenance provider.

The adopted amendment to §285.2, provides for the renumbering of paragraphs (39) - (72) to incorporate the new definition for maintenance technician.

The adopted amendment to §285.2(56), amends the responsible agency for registered sanitarians to Texas Department of State Health Services.

The adopted amendment to §285.2(73), creates a new definition for testing and reporting which describes the minimum scope for inspection systems requiring testing and reporting.

The adopted amendment to §285.2(74), renumbers the definition for a well from paragraph (72) to (74).

The adopted amendment to §285.3(a)(4), General Requirements, provides for requirements under which a permitting authority may require conditions for a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and the final approval of a proposed OSSF.

The adopted amendment to §285.3(b)(3), changes the terminology from a "deed" to an "affidavit" for OSSFs which require maintenance, including the requirements contained within the recorded affidavit and reflects the fact that sale of the property transfers the OSSF as part of the transaction and is not a separate transaction. The adopted amendment removes the necessity for a maintenance contract and would allow the homeowner to either self-maintain the system or enter into a contract with a maintenance provider.

The adopted amendment to §285.3(g), eliminates the outdated reference to 30 TAC Chapter 331.

The adopted amendment to §285.4(b)(1), Facility Planning, eliminates the redundancy in requirements for small lots or tracts created before January 1, 1988, by striking requirements and adding a general statement that OSSFs on small lots or tracts of land must comply with the requirements of Chapter 285.

The adopted amendment to §285.4(c), clarifies the current language for subdivision or development plans and requires buildings with food service establishments and restaurants to have twice the initial required area available for installing wastewater treatment devices in order to allow for growth and expansion.

The adopted amendment to §285.5(a)(3)(A), Submittal Requirements for Planning Materials, eliminates the outdated reference to the Civil Statutes requiring a permit applicant to have a professional engineer (PE) design the OSSF when the foundation size exceeds 5,000 square feet. This portion of the Civil Statute has been recodified within the Texas Occupations Code, (§1001.56(f)) and is not a requirement related to OSSF siting, design, permitting, construction, operation, or inspection. The adopted amendment also renumbers existing §285.5(a)(3)(B) to §285.5(a)(3)(A).

The adopted amendment to §285.5(a)(3)(B) and (C), provides for verifications required from a PE. Specifically, these are to verify the structural requirements for septic tanks and to provide verification of OSSF designs when OSSFs are proposed in floodways.

The commission has withdrawn all proposed amendments to §285.6, Cluster Systems, and the current rules remain in effect.

The adopted repeal to §285.7, Maintenance Requirements, eliminates the current requirements for OSSF maintenance and is replaced with the new §285.7, Maintenance Requirements. This new section provides requirements for maintenance providers and maintenance technicians, clarifies the difference between the initial two-year service policy and maintenance contracts after the initial two-year service policy, clarifies the initial two-year policy with respect to the sale of the residence and would require manufacturers to make replacement parts available to homeowners, installers, and maintenance providers. This new section provides for a one-year transition period for maintenance companies and maintenance providers to comply with new licensing and registration requirements. This new section differentiates between the current citation for the sample testing and reporting record in Figure: 30 TAC §285.90(3) and the required testing and reporting in the table in Figure: 30 TAC §285.91(4), and includes maintenance procedures approved by the executive director. Section 285.7(c) adds the requirement to include the business physical address and telephone number for the maintenance provider on all maintenance contracts based on comments to the rules. Finally, this new section allows a permitting authority to inspect an aerobic treatment system at any time.

The adopted amendment to §285.8, Multiple On-Site Sewage Facility (OSSF) Systems on One Large Tract of Land, eliminates the outdated reference to 30 TAC Chapter 331.

Subchapter B - Local Administration of the OSSF Program

The adopted amendment to §285.13(b)(3), Revocation of Authorized Agent Delegation, removes the allowance for other AAs to review the commission's investigation findings of another AA.

Subchapter C - Commission Administration of the OSSF Program in Areas Where No Authorized Agent Exists

The adopted amendment to §285.21(c), Fees, replaces "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality."

Subchapter D - Planning, Construction, and Installation Standards for OSSFs

The adopted amendment to §285.30, Site Evaluation, requires all design planning materials to include soil borings or backhoe pits, slope patterns, 100-year flood boundaries, and separation distances.

The adopted amendment to §285.32, Criteria for Sewage Treatment Systems, provides for specific site and related OSSF design details in §285.32(b)(1)(D) by preventing tank infiltration by requiring sealed risers, watertight caps, and prevention of unauthorized access.

The adopted amendment in §285.32(b)(1)(E)(i) requires a structural verification by a PE for the manufacture of pre-cast tanks with a 30-day notification time limit to the permitting authority.

The adopted amendment in §285.32(b)(1)(H) specifies leak testing for tanks.

The adopted amendment in §285.32(c)(1) specifies proprietary system maintenance requirements and leak testing for proprietary systems.

The adopted amendment in §285.32(c)(2) provides more detail concerning leak testing based on comments and also addresses proprietary tank size conformance with revised §285.91(2).

The adopted amendment in §285.32(c)(3) provides reference to §285.7(d) concerning homeowner maintenance testing and reporting.

The adopted amendment in §285.32(c)(5)(A) revises the citation for the latest version of the National Sanitation Foundation International (NSF) Standard 40 requirements from 1999 to 2005 and provides for influent limits and use of proprietary systems for pre-treatment.

The adopted amendment in §285.32(c)(6) removes the mandatory seven-year proprietary disposal system testing protocol.

The adopted amendment to §285.32(f), concerning other design considerations, establishes limits for high strength sewage, provides for OSSF biochemical oxygen demand (BOD) design justification, and adds design consideration for flow equalization.

The adopted amendment to §285.33, Criteria for Effluent Disposal Systems, adds requirements for pressure-rated pipe within disposal areas with the exception of drip disposal tubing. This adopted amendment adds the minimum disinfection requirement for effluent in the pump tank to meet the requirements in the table in Figure: 30 TAC §285.91(4), and revises the effective date for color-coding pipe.

The adopted amendment to §285.34(b)(1) includes revisions for leak testing of pump tanks based on comments.

The adopted amendment to §285.34(d), concerning grease interceptors, removes the statement "or under any other standards approved by the executive director" and replaces it with the reference to the 1980 United States Environmental Protection Agency Design Manual: Onsite Wastewater Treatment and Disposal Systems.

Subchapter F - Licensing and Registration Requirements for Installers, Apprentices, Designated Representatives, Site Evaluators, Maintenance Providers and Maintenance Companies

The adopted amendment to Subchapter F, §285.50, General Requirements, eliminates the word "companies" and adds "providers and maintenance technicians" to the title and throughout the adopted rules. The adopted amendment also removes the effective date of September 1, 2002, to obtain a site evaluator's license.

The adopted amendment to §285.60, Duties and Responsibilities of Site Evaluators, eliminates the necessity to maintain an installer or DR's license after being granted a site evaluator's license and updates the reference to include professional geoscientists which is a license that became effective after this section was last amended.

The adopted amendment to §285.61, Duties and Responsibilities of Installers, eliminates the requirements for installers to: maintain aerobic treatment systems (ATUs), train a homeowner in aerobic system maintenance, or make replacement parts available to the homeowner for aerobic systems; and requires installers to make all aerobic system repairs in accordance with the approved planning materials.

The adopted amendment to §285.62, Duties and Responsibilities of Designated Representatives, requires DRs to verify the existence of a maintenance contract between the homeowner and the maintenance provider or, until September 1, 2009, a maintenance company. This adopted amendment requires written permission from the DR's employer if the DR desires to perform OSSF-related activities for compensation outside of the AA's regulatory jurisdiction.

The adopted amendment to §285.63, Duties and Responsibilities of Apprentices, adds the requirement that apprentices maintain a registration with the commission and renumbers the remainder of that section.

The adopted amendment to §285.64, Duties and Responsibilities of Maintenance Companies, eliminates the word "companies" from the heading and adds "providers and maintenance technicians." The adopted amendment creates two subsections within §285.64 - one for maintenance providers and the other for maintenance technicians. The adopted amendment adds the requirement for licensure of maintenance providers and registration for maintenance technicians. The amendment eliminates the need for a maintenance provider to work in a company under an Installer II and eliminates the need for maintenance providers or maintenance technicians to obtain manufacturer's certification. The adopted amendment eliminates the requirement to train a homeowner in aerobic system maintenance when requested by the homeowner. The adopted amendment establishes §285.64(b) that requires maintenance technicians to: be registered with the commission; represent the maintenance provider while performing maintenance on an OSSF; perform services associated with OSSF maintenance under the direct supervision and direction of the maintenance provider on-site or be in direct communication with the maintenance provider; refrain from receiving compensation for OSSF maintenance from anyone except the supervising maintenance provider; maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and not advertise or otherwise portray themselves as a maintenance provider.

The adopted amendment to §285.65, Suspension or Revocation of License or Registration, amends the section to add provisions for suspension or revocation of authorizations for maintenance providers, and maintenance technicians amends the statutory authority under which the commission may suspend or revoke a license or registration by adding reference to Texas Water Code (TWC), §7.303 and eliminates the reference to 30 TAC §30.33.

Subchapter G - OSSF Enforcement

The adopted amendment to §285.70, Duties of Owners With Malfunctioning OSSFs, adds provisions from HB 2482 under which a DR could pursue violations against homeowners who maintain their own aerobic systems and violate the Chapter 285 rules, and in the case of repeat non-compliance, the adopted amendment requires the homeowner to enter into a maintenance contract with a maintenance provider.

The adopted amendment to §285.71, Authorized Agent Enforcement of OSSFs, expands the pool of individuals to include PEs performing site evaluations, maintenance providers, and maintenance technicians against whom a DR could receive complaints and pursue enforcement against.

Subchapter I - Appendices

The adopted amendment to §285.90, Figures, revises the title of Figure 2 in paragraph (2), "Model Deed and Affidavit Language" to "Model Affidavit to the Public" and incorporates changes in the rules for homeowners with OSSFs that require maintenance. The adopted amendment to Figure 3 in paragraph (3), Sample Testing and Reporting Record, eliminates the need for homeowners to record or send testing and reporting results to permitting authorities and addresses comments by adding a reference to the physical address and business telephone number for the responsible maintenance provider to Figure 3. The adopted amendment also requires that the maintenance provider check the sludge condition and send the owner a copy of the testing and reporting results.

The adopted amendment to §285.91, Tables, revises the title of Table II in paragraph (2), "Septic Tank Minimum Liquid Capacity" to "Septic Tank and Aerobic Treatment Unit Sizing." The adopted amendment adds a section to this table entitled "Aerobic Treatment Unit Sizing for Residences", which requires slightly larger treatment tanks for proposed aerobic systems. This adopted change is based on input from the OSSF work group. The adopted amendment to Table III in paragraph (3), Wastewater Usage Rate, adds a provision for restaurant influent wastewater quality, revises the commission's name, and corrects a spelling error. The adopted amendment to Table X in paragraph (10), Minimum Required Separation Distances for On-Site Sewage Facilities, adds categories for setbacks to underground and overhead easements, includes retention ponds and basins, allows solid pipe in sleeved lines under driveways and sidewalks, removes setback requirements for secondary effluent and building foundations, and adds requirements for drainage easements and detention ponds. The adopted amendment to Table XI in paragraph (11), Intermittent Sand Filter Media Specifications (ASTM C-33), corrects the current spelling and terminology of "finess modulus" to "fineness modulus". Finally, the adopted amendment to Table XII in paragraph (12), OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements, eliminates the requirement for a maintenance contract as well as eliminating testing and reporting requirements for homeowners who maintain their own aerobic system.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code (TGC), §2001.001 *et. seq.*, and determined that the adopted rules are not subject to TGC, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in TGC, §2001.0225(g)(3). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, of the public health and safety of the state or a sector of the state. The intent of these adopted rules is to implement the provisions of HB 2482 (80th Legislature, 2007) regarding homeowner maintenance of ATUs and develop a new program for licensing maintenance providers and registering maintenance technicians; to address a petition by the TEHA requesting that DRs be prohibited from performing on-site related work in areas beyond their regulatory jurisdiction; and to address a number of other issues concerning the design, permitting, and operation of OSSFs. In general, these revisions are not expected to result in significant fiscal implications for the general public, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, AAs or DRs. Similarly, these adopted rules are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these adopted rules do not meet the definition of "a major environmental rule" as defined in TGC, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these adopted rules do not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 applies only to a major environmental rule which: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rules do not exceed a federal standard because there are no federal standards regulating OSSFs. The adopted rules do not exceed state law requirements because these rules are required by HB 2482 or other provisions of THSC, Chapter 366, not amended by HB 2482. Also, the adopted rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding OSSFs. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency. Therefore, TGC, §2001.0225 is not applicable to these adopted rules. The commission invited but received no comments regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under TGC, Chapter 2007. The intent of these adopted rules is to implement the provisions of HB 2482 (80th Legislature, 2007) regarding homeowner maintenance of ATUs; to develop a new program for licensing maintenance providers and registering maintenance technicians; to address a petition by the TEHA requesting that DRs be prohibited from performing on-site related work in areas beyond their regulatory jurisdiction; and to

address a number of other issues concerning the design, permitting, and operation of OSSFs. Promulgation and enforcement of these adopted rules would be neither a constitutional nor a statutory taking of private real property. Specifically, the subject adopted regulations would not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules do not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP policies applicable to these adopted amendments include Nonpoint Source (NPS) Water Pollution and require, under the THSC, Chapter 366, governing on-site sewage disposal systems, that on-site disposal systems be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. The adopted amendments require that applicants, maintenance providers and maintenance technicians show protectiveness through proper maintenance of aerobic systems and the amendments are therefore, consistent with the CMP policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not relax current treatment or disposal standards. No comments were received concerning the CMP.

PUBLIC COMMENTS

An opportunity to provide public comment was offered at a public hearing scheduled in Austin on April 29, 2008. The comment period closed on May 5, 2008.

The commission received 56 comments concerning the proposed rules. Comments were received from BaCorp, Bailey Environmental, BioMicrobics, Inc., Bord Na Mona Environmental Products, Inc. (Bord Na Mona), Civil Engineering Service Company (CESC), Environmental Construction Services, the Fort Bend County Environmental Health Department (Ft. Bend), Frtiz, Byrne, Head & Harrison, PLLP (FBHH), Grimes County Environmental, the Harris County Public Infrastructure Department, the Heart of Texas Chapter of the Texas On-Site Wastewater Association (HTCTOWA) submitted with 14 signatures, Kaufman County, Koller & Son Septic, LBC Manufacturing, Lubbock County, Parker County Health Department, Preserve Our Water, Inc. (POW), the Lower Colorado River Authority (LCRA), Snowden On-Site, Inc., Swinscoe's Septic Service, the Tarrant County Health Department, the Texas AgriLife Extension Service (TAES), the Texas Environmental Health Association (TEHA), the Texas On-Site Wastewater Association (TOWA), the Texas Society of Professional Engineers (TSPE), Xyron Environmental, and 27 individuals. Additionally, eight oral comments concerning these rules were offered during the April 29, 2008 public hearing.

RESPONSE TO COMMENTS

General Comments

The Harris County Public Infrastructure Department commented that they agree with each of the proposed rule changes. Lubbock County commented that it should be demonstrated that there is a statewide problem before any new rule is adopted. One individual commented that the commission should follow up and follow through with enforcement instead of changing the rules. One individual commented that they are concerned with the environmental implications for health and welfare and the general ecosystem when the legislature makes changes that significantly reduce oversight of OSSFs and the rules fail to require any professionalism in the design, oversight and operation of OSSFs - especially in areas where spray disposal is utilized. One individual commented that the commission cannot enforce against a licensee because it would deprive the licensee of a source of income. One individual commented that the commission does not pursue and enforce against licensees who violate the law. One individual commented that while the Texas On-Site Wastewater Treatment Research Council funds a number of projects, industry chooses to ignore these projects. One individual commented that the named-member workgroup should be permanent. One individual commented that maintenance providers should buy an existing business or attend at least 40 hours of training relating to providing ATU maintenance. POW and one individual commented that there is no such thing as a "standard" OSSF because every system designed is specific for its location.

The commission acknowledges the comments and responds that the impetus for the adopted rules was HB 2482 that repealed requirements of HB 2510 and mandated new requirements that the adopted rules implement. The adopted rules also address a TEHA petition for rulemaking, incorporate commission initiated changes and also include some elements of Texas On-Site Treatment Research Council studies. No changes were made in response to these comments.

BaCorp commented that the rulemaking process has been confusing because they have attended three separate information sessions concerning the rules and conflicting information has been given out at these meetings. One individual commented that the rule process is confusing in that different commission representatives gave conflicting information about the rules when asked. This individual also requested that the commission keep its responses consistent so it can add credibility to the process.

The commission responds that a stakeholder group was used during the rulemaking process which met on three occasions to

assist staff in addressing key elements in the rules. A public hearing was also held on April 29, 2008 to allow for public input. In addition to the use of workgroup and the public hearing, the proposed rules were also published in the *Texas Register* and made available to anyone wishing to review them. Publishing the proposed rules in the *Texas Register* ensures the same set of rules is being reviewed so that there will not be any misunderstanding concerning what is in the rules. No changes were made in response to these comments.

Snowden On-Site, Inc. commented that while the staff had worked hard on improving the rules, the language is largely insufficient - especially in the use of words like "may" and "should" when they need to be "must" and "shall" - and that the rules are woefully lacking when it comes to protection of public health and the environment.

The commission responds that Snowden On-Site, Inc. did not provide any specific instance where the use of "may" and "should" needs changing to "must" and "shall" in the rules. However, the intent is to allow the commission, its AAs, designers, and permittees flexibility in addressing site-specific OSSF issues. For example, doubling the minimum required area for restaurant effluent disposal may be a consideration for potential growth but should not be a requirement because it may unnecessarily require the purchase of land and construction for an effluent disposal system on land that may not be required for disposal. No changes were made in response to this comment.

One individual commented that the fiscal note in the proposed rules was incorrect when it stated that there would not be a negative effect on the maintenance provider because this individual has lost 10% of their clients due to non-renewal.

This commenter did not state the nature of the non-renewals, such as a change in maintenance providers, exercising the homeowner's option to self maintain, etc. No changes were made in response to this comment.

Specific Comments

One individual commented that the definitions in §285.2 need to include "aerobic treatment" and "on-site sewage disposal system using aerobic treatment".

The commission responds that while these terms are well discussed and detailed in the rules, they may be considered for definition in future rulemaking because they would be best addressed through more consideration with workgroup input. No changes were made in response to these comments.

FBHH commented that adding condominiums to the adopted changes in the definition of a cluster system was not adequately addressed in the proposed fiscal note because it significantly impacts the development community and the public relating to increased costs associated with permitting, repairs, and the potential conversion of apartments to condominiums. FBHH also commented that the commission neither presented this topic for discussion to the workgroup nor included developers in considering this change to the definition. Finally, FBHH commented that there is confusion in the adopted rules concerning condominium rental versus ownership, conversion from apartments to condominiums and leasehold condominium conversions.

The commission disagrees with the characterization of each of these comments but recommends that the topic of cluster systems for condominiums be discussed with a balanced workgroup in anticipation of future rulemaking. As a result, the proposed changes to §285.2(10) have been withdrawn.

The LCRA commented that they disagree with the inclusion of condominiums in the definition and that multi-unit residential and manufactured housing communities need to be excluded from the definition for cluster system in §285.2(10). One individual commented that the definition of a cluster system should include the exclusion for mobile homes, recreational vehicle parks and businesses with multiple structures.

The commission responds that the proposed changes to §285.2(10) have been withdrawn, which eliminates all reference to condominiums. The commission responds that §285.4(a)(2) provides exclusion for manufactured housing communities or multi-unit residential developments. Expanding the existing exclusion to include recreational vehicle parks and businesses may be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to these comments.

One individual commented that the definition for maintenance should be only limited to inspection of the units and not repair/replacement. One individual commented that the definition for maintenance be changed to service.

The commission responds that changing these definitions would create significant impacts on the regulated community, the commission and its AAs and these comments would be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to these comments.

One individual commented that while there is a definition for a malfunctioning OSSF, the requirement for making this determination are poorly defined in Chapter 285. Additionally, this individual commented that the definition for nuisance is lacking in that the rules do not have adequate measures for maintenance, reporting or sanctions against non-compliance.

The commission acknowledges these comments and responds that these comments may be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to these comments.

TEHA commented that the definition of a professional sanitarian be revised to state "Professional sanitarian - An individual registered by the Texas Department of State Health Services in accordance with Texas Occupations Code Chapter 1953 who is trained in sanitary science to perform duties relating to education and inspections in the field of environmental sanitation in the State of Texas." The current definition states that a Professional sanitarian is ". . . An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas."

The commission agrees that the definition should correctly reflect the current licensing agency in the definition in §285.2(56). Changes to the correct departmental name were made in response to this comment.

One individual commented that §285.3(a)(4) allows AAs and DRs to alter permitting requirements on a daily basis and that the provision should be removed from the rules.

The commission disagrees with the commenter's request to remove the provision from the rules. The rule is specifically intended to clarify to permitting authorities their responsibility in evaluating each permit request to ensure that the permitted OSSF will operate properly. It gives the permitting authorities latitude in resolving site-specific problems related to permitting that are neither addressed in the local order nor the rules,

but does not advocate an authority's ability to change permit requirements once approval has been given - or on a daily basis. No changes were made in response to this comment.

One individual commented that there is a disparity in the rule because HB 2482 states that an AA or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system, yet the rules allow specific permitting conditions for AAs.

The commission disagrees with this interpretation because it presumes that local permit conditions for specific OSSF performance is solely tied to the need for a maintenance agreement beyond the initial two-year service period of the ATU, when these are specifically two different requirements - i.e., the statute does not allow a permit to be conditioned upon a signed maintenance contract after the expiration of the initial service policy while a local permit may be written with site-specific requirements in order to make certain the OSSF design is sufficient and will operate properly. No changes were made in response to this comment.

One individual provided additional language concerning the transfer of the OSSF occurring with the sale of the property by replacing the word "must" with "shall" in §285.3(b)(3)(D). This language also specifies that if the OSSF requires maintenance, the buyer will record a new affidavit to the county deed records and provide a certified copy to the permitting authority.

The commission agrees with this comment and §285.3(b)(3)(D) has been revised to reflect the fact that sale of the property transfers the OSSF as part of the transaction and is not a separate transaction.

One individual provided language that if the homeowner decides to self-maintain their ATU, the homeowner shall notify the permitting authority in writing within 30 days prior to the contract expiration.

The commission disagrees because HB 2482 specifically removed any testing and reporting requirements for homeowners who maintain their ATUs. No changes were made in response to this comment.

POW and one individual commented that §285.3(c) requires a permitting authority to either approve or deny a permit within 30 days of receiving the application but does not specify what happens if action is not taken by the permitting authority during that time frame.

The commission agrees that the consequences for an AA not responding to a permit application within this time frame are not specifically addressed in this section of the rules but the rules allow for a process in which to appeal a DR's decision through specific language in every AA's order in §285.11(d) and the appellant may file a written complaint against a DR directly with the commission. No changes were made in response to these comments.

POW and one individual disagreed with §285.3(h)(1) where the rules state: "Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met" because no variance could be allowed if any other place on the property were available for OSSF use.

The commission disagrees with this generalization and responds that the utilization of a variance is only for situations in which absolutely no alternatives exist. No changes were made in response to this comment.

POW and one individual commented that while the rules stipulate that boreholes, cesspools, and seepage pits are prohibited from installation or use, it is their impression that the commission does not have the authority to investigate the property.

The commission responds that the TWC, §26.014, allows an AA right of entry for investigating and pursuing enforcement against illegal OSSF installations. No changes were made in response to this comment.

One individual commented that the date for grandfathering platted subdivisions keeps changing and provided language which allows variances only for replacement of OSSFs for existing structures.

The commission disagrees with this comment because the dates have not changed and all OSSFs should have equal consideration. No changes were made in response to this comment.

One individual provided additional information to be required for permit planning materials which included a property survey or metes and bounds description, submitting the comprehensive drainage plan to the local permitting authority having jurisdiction over storm water quality and flood management practices, the type(s) of proposed typical development, and that all drawings be submitted drawn to standard engineering scale.

The commission responds that while this information can be required by local authorities, the existing rules reasonably require sufficient information for a DR to make an informed analysis. No changes were made in response to these comments.

One individual agreed with the new requirement for restaurants (or buildings with food establishments) to have additional area for treatment units for expansion purposes and commented that the rules should clearly state that the disposal area design is only a function of actual water or the minimum requirements in Table III, Wastewater Usage Rates in §285.91(3). This individual and the LCRA commented that there is a conflict between the summary and the rule. Specifically, the summary states the designer include doubling the area needed for disposal while the rules require doubling the treatment area.

The commission agrees that the proposal summary conflicted with the proposed rule. The adopted summary has been modified to reflect the need for additional treatment area only and §285.4(c)(2) of the rules have been modified to specify that the requirement applies only to additional treatment unit area.

One individual commented that it is important to also require doubling the disposal area for restaurants for future planning purposes.

The commission responds that while it agrees that planning for additional disposal area is a critical aspect of the design, a blanket requirement to double the disposal area for restaurants does not consider future disposal alternatives and may be too conservative. No changes were made in response to this comment.

The LCRA commented that the rules should require a cover letter from the designer when submitting design information to the permitting authority in order to help OSSF owners make better choices when deciding on treatment and disposal systems.

The commission agrees with the intent of this comment but disagrees that it be a part of the minimum requirements for OSSF design. However, local authorities have the ability to require

more detailed, or more stringent submittal information in order to review and approve a permit. No changes were made in response to this comment.

POW and one individual commented that there is nothing in the training or essential experience of a registered sanitarian that would qualify that profession to practice engineering. POW and this individual also commented that it should be clear that sanitarians are not qualified to prepare such documents as a comprehensive drainage plan and their involvement should be limited to single house OSSFs which do not include pretreatment beyond a septic tank.

The commission disagrees with these comments because nothing prohibits a registered sanitarian from acquiring the necessary skills, or even hiring an engineer, to satisfy the minimum requirements for OSSF planning materials. No changes were made in response to this comment.

One individual commented that performance testing data for septic tanks needs to be included in the rules.

The commission responds that while it agrees with the technical aspects of this comment, performance testing is a part of the septic tank requirements found in American Society for Testing and Materials (ASTM) Standard C 1227. No changes were made in response to this comment.

One individual asked if the rule will consider scouring analysis or mitigation data. If not, the PE's demonstration is unnecessary and becomes an added expense and review burden.

The commission responds that while a PE analysis is required attesting to septic tank construction, it potentially becomes a complex and expensive process for OSSF owners if an advanced engineering analysis for scouring and mitigation becomes a part of the minimum requirements and this comment may be best addressed through more consideration with workgroup input. No changes were made in response to this comment.

TSPE commented that while registered sanitarians design smaller and less complex treatment and disposal systems, the advent of widespread use of pressurized surface and subsurface systems places increased reliance on the manufacturer's representations as to the efficacy of these systems and as a result, a PE should be the only design professional developing and submitting planning materials on larger and more complex systems. TSPE also commented that the intent of Texas Occupations Code, §1001.056 contemplates the maximum size of an OSSF serving a structure is estimated at 1,000 gallons of wastewater per day - that is, only PEs are capable of designing OSSFs which treat more than 1,000 gallons of wastewater per day. TSPE also provided language specifying that only PEs can design OSSFs over 1,000 gallons per day.

The commission disagrees with TSPE's contemplation of the Texas Occupations Code because the Texas Occupations Code, §1001.056 neither mentions OSSFs nor approaches any designation on what is an appropriate delineation regarding engineering design responsibilities for OSSFs. No changes were made in response to these comments.

FBHH commented that adding condominiums to the adopted changes in prohibiting cluster systems was not adequately addressed in the proposed fiscal notes because it significantly impacts the development community and the public relating to increased costs associated with permitting, repairs, and the potential conversion of apartments to condominiums. FBHH commented that the commission neither presented this topic for discussion to the workgroup nor included developers in considering this change to the cluster prohibition. FBHH commented that the adopted rules would require a condominium to retrofit the entire OSSF if any repairs are needed. FBHH commented that requiring a CCN would be expensive and would require creation of multiple small CCNs and the adopted rules retroactively regulate OSSFs for condominiums where they have not previously been classified as a cluster system.

The commission disagrees with the characterization of each of these comments but recommends that the topic of cluster systems for condominiums be discussed with a balanced workgroup in anticipation of future rulemaking. As a result, the proposed amendment to §285.6 has been withdrawn.

The LCRA commented that it should be clearly stated whether condos or "garden homes" having their own non-shared OSSF are excluded from the OSSF ban if all systems are maintained under a single fund or "utility" and commented that there needs to be a definition for "single tract of land" because it could be interpreted to be a platted lot or a deeded property with multiple platted lots.

The commission acknowledges these comments and responds that §285.6 has been amended to eliminate any change in response to other comments. These comments may be considered for future rulemaking because they would be best addressed through further consideration with workgroup input. No changes were made in response to these comments.

The LCRA commented that §285.6(c) and (e) seem to require denial of permitting materials if the applicant does not comply with the requirements of Chapter 291 and asked if the commission has the authority to delegate this enforcement to AAs and if so, how would the AA enforce the requirements of Chapter 291.

The commission responds that the proposed changes to §285.6 have been eliminated. However, the provisions of TWC, Chapter 13, and 30 TAC Chapter 291 do not allow delegation of these responsibilities to AAs and utility regulation remains solely with the commission. No changes were made in response to this comment.

One individual asked who will enforce the provisions of Chapter 291 and additionally provided wording for permitting authorities to use discretion when allowing existing cluster systems to be repaired.

The commission responds that AAs and DRs are not responsible for enforcing the provisions of Chapter 291 as these requirements fall solely within the commission's jurisdiction. Additionally, §285.2(61) and §285.35 contain provisions for emergency repairs. However, the proposed changes to §285.2(10) and §285.6 have been eliminated. No changes were made in response to this comment.

POW and one individual commented that the commission does not want to be responsible for cluster type developments.

The commission disagrees with this comment because it makes provisions for allowing cluster systems under Chapter 285, under certain circumstances, and also under 30 TAC Chapters 205 and 305. No changes were made in response to this comment.

HTCTOWA and Swinscoe Septic Service stated that the proposed changes are not in their best interest and that the present rules are sufficient for maintenance providers.

The commission responds that HTCTOWA did not provide specifics on what proposed changes are not in the best interest

of maintenance providers. Additionally, HB 2482 expressly eliminated the current maintenance provider registration program and allowed the commission to implement a new registration program for maintenance providers. The commission developed the proposed maintenance provider program with workgroup consensus. No changes were made in response to this comment.

Environmental Construction Services and one individual commented that the rules should require an ATU manufacturer's certification. Two individuals commented that the manufacturer's certification should be required because it otherwise allows nonqualified persons to maintain ATUs. One of these individuals also commented that manufacturers will be relieved of their responsibility of sending a representative to troubleshoot a product by removing this certification and that certification is the only tool by which a manufacturer has to ensure that qualified people are maintaining the product correctly. Two individuals commented that not requiring a manufacturer's certification is a mistake. Woodard's Septic service, Inc. commented that they are not in favor of requiring a manufacturer's certification. One individual commented that they are in favor of taking any course the state deems appropriate as long as manufacturer certification is no longer required. One individual commented that they support the rules not requiring manufacturer's certification. One individual commented that the commission should eliminate all restrictions on who can service an ATU, require all manufacturers to train any installer or maintenance licensee, and require the manufacturer to provide parts.

The commission responds that the manufacturer's certification requirement was removed from Texas Health and Safety Code, §366.0515(n) in HB 2482. The rules also require manufacturers to provide ATU parts to homeowners, installers and maintenance providers. No changes were made in response to this comment.

One individual commented that electronic maintenance reports should not have to contain the signature of the maintenance provider.

The commission disagrees with this comment because the maintenance provider is solely responsible for the testing and reporting and all results submitted to permitting authorities must show evidence of the maintenance provider's concurrence with the facts in the report. It is imperative that these reports, which are often faxed to permitting authorities, contain the signature of the maintenance provider. No changes were made in response to this comment.

TAES commented that while the initial two year service policy is separated from the maintenance contract, the service policy should state that it is for the protection of the owner and to provide maintenance service for first two years of ATU operation.

The commission agrees with this comment and §285.7(c) has been revised.

The LCRA commented that the initial service policy be required before the permit is approved because it might create a situation where homeowners could occupy a home without having the required service policy in place.

The commission disagrees with this statement because all OSSFs with aerobic treatment are required to be sold with a two year service policy for the aerobic system. In the instance where a builder obtained a permit for an ATU in a speculative residence, the service policy should not commence until the buyer takes possession of the residence because the assumption is that the ATU will not be fully operational until the residence is occupied. Allowing the service policy to be initiated before the notice of approval could also reduce the service policy period for the homeowner. However, should the site conditions differ, i.e., the speculative residence is used as a sales office, the service policy should commence with the date it becomes a sales office. No changes were made in response to this comment.

One individual recommended that permitting authorities are not part of the Texas Real Estate Commission nor have additional time for real estate transactions, and proposed a revision for the start of the ATU service agreement to coincide with the date of approval by the permitting authority that this individual commented is consistent with NSF Standard 40.

While the commission agrees that permitting authorities are not necessarily part of the Texas Real Estate Commission or have the additional time for real estate transactions, NSF Standard 40 recognizes the commencement of the service period as the date the owner takes possession. This standard also describes service requirements for the system owner, and the ATU's subsequent maintenance. No changes were made in response to this comment.

One individual commented that it is important to have the physical address and the phone number of the maintenance provider who is fulfilling the terms of the maintenance contract included on the contract because it prevents disappearing maintenance companies.

The commission agrees that this information should be included on a maintenance contract. New §285.7(d)(1)(F) has been added in response to this comment.

Kaufman County commented that the maintenance company should be responsible (instead of the homeowners) for submitting a copy of the maintenance contract to the permitting authority, citing instances where the homeowner submitted false information. Kaufman County also stated that several maintenance companies regularly submit the contract on a voluntarily basis.

The commission responds that since the OSSF permit is issued to the permit holder, or transferred to the owner upon sale of the property, the responsibility remains with the permit holder to provide proof of the proper operation of the ATU to the permitting authority through a maintenance contract. The permitting authority is responsible for initiating and following through with corrective action when violations occur. No changes were made in response to this comment.

One individual commented that the homeowner should be required to notify the permitting authority if the homeowner discontinues the maintenance contract with the maintenance provider.

The commission disagrees with this comment. HB 2482 removed the need for a homeowner to report ATU maintenance status to the permitting authority. No changes were made in response to this comment.

HTCTOWA, Parker County Health Department, and four individuals commented that homeowners are incapable of maintaining their own aerobic systems without proper training and that maintenance contracts should be required. They further expressed concern that a result of this will create a health risk to neighbors and/or other environmental health risk. Koller & Son Septic Service asked how does allowing homeowners to maintain their own ATUs protect our water and asked if the commission decided who will be liable when there is an illness outbreak or accident

due to negligence or lack of disinfectant. Parker County Health Department also commented that improper repairs by homeowners will result in improper operation and environmental damage. TOWA and one individual commented that they do not support homeowner maintenance. One individual commented that even considering letting homeowners maintain their own ATUs without training or reporting requirements is very irresponsible. One individual commented that they do not agree with the requirement that a homeowner can maintain and service their own ATU. POW and one individual commented that NSF Standard 40 stipulates that "Manufacturers shall provide comprehensive and detailed operations and maintenance instructions to authorized representatives". One individual commented that the TCEQ is proposing to decrease the level of ATU oversight and that all wording regarding relieving homeowner from being trained should be removed form the rules.

The commission responds that HB 2482 repealed HB 2510 homeowner training and reporting requirements and expressly allows homeowners to maintain their own aerobic systems without the need for testing or reporting. As a result, the homeowner is responsible for the proper operation and maintenance of their ATU. No changes were made in response to these comments.

The LCRA commented that the rules are not clear if a homeowner can perform maintenance on a second home.

The commission disagrees with this comment. Homeowners with a second home are allowed to maintain the ATU on their second home as long as the second home is not for commercial, speculative residential, or multifamily property, as found in §285.7(d)(4)(B). No changes were made in response to this comment.

One individual asked how could the commission or its AAs determine if a homeowner-maintained system is in compliance if testing and reporting are not required.

The commission responds that HB 2482 repealed HB 2510 homeowner testing and reporting requirements and recognizes that determining compliance in these cases may be more difficult for permitting authorities. It can be reasonably argued that permitting authorities will need to rely more on complaints in order to pursue violators. Additionally, HB 2482 also allows permitting authorities to perform ATU inspections as needed, and Texas Health and Safety Code, Chapter 366 provides for permitting authorities to adopt more stringent requirements. No changes were made in response to this comment.

One individual commented that the maintenance report include the name of the maintenance company, the maintenance company's physical address, the business telephone at the maintenance company's physical location, the date and start and end times of the inspection, the names of the maintenance technicians performing the work, including their license numbers, printed names, and signatures and the physical address and permit number of the inspected system. This individual commented that the current system creates a burden on permitting authorities without this information.

The commission agrees with this comment and responds that local permitting authorities also have the ability to require more information in reports they receive from those providing maintenance. Regardless, §285.90(3) Figure 3 has been revised to include the company's name, physical address and business telephone number on the sample testing and reporting record.

The LCRA commented that they support the change to require profile holes to be designated on design plans, and the need for slope patterns to be clearly identified on site plans.

The commission acknowledges this comment. No changes were made in response to this comment.

The LCRA commented that that they support the change to require slope patterns to be clearly indicated on design plans and recommended these contours be shown on two foot intervals.

The commission acknowledges this comment and responds that while specifying the contour level may be too restrictive in some cases, the permitting authority has the ability to require this. No changes were made in response to this comment.

POW and one individual commented that the commission should provide definitions for slope, sharp break and slope where seeps may occur.

The commission responds that these definitions have not historically presented questions or confusion. No changes were made in response to this comment.

One individual commented that the flood plain manager should be added as an alternative for a FEMA study when an OSSF designer is determining the flood plain.

The commission responds that while this may be a viable alternative, there may be other circumstances which may need to be addressed, such as a how to resolve a conflict between the alternatives. Permitting authorities can also require additional resources for flood plain determination. No changes were made in response to this comment.

The LCRA commented that they support the requirement that flood plain boundaries be indicated on site drawings that also indicate if the 100-year flood plain does not exist within the tract. The LCRA also supports the separation requirements to be identified on the site evaluation drawing.

The commission acknowledges these comments. No changes were made in response to these comments.

One individual commented that the requirement for separation distances described in §285.30(b)(4) needs to include that all features and separation distances be clearly indicated on the site drawing, as required in §285.5(a) and commented that a reference to §285.91(10) be added.

The commission responds that this comment is redundant because §285.30(b)(4) already refers to §285.91(10). No changes were made in response to this comment.

POW and one individual asked for a detail of a two-way cleanout plug and "cleanout plugs . . . of the single sanitary type", as described in §285.32(a)(5) and (6) (relating to Pipe from building to treatment systems). POW and this individual also asked that the wording change from " . . . *shall* be arranged in series" to " . . . *may* be arranged in series" (*italics added*) in §285.32(b)(1)(C)(ii) because the wording appears to require only two or more tanks.

The commission responds that providing this type of detail and wording change in the rules would be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

Bord Na Mona commented that they support the rule language in §285.32(b)(1)(D) with an addition that the risers extend only to six inches below the ground surface, be mechanically fastened to the tanks and that "The risers shall have inside diame-

ters which are equal to or larger than the inspection or cleanout ports. The risers shall be fitted with removable watertight caps and prevent unauthorized access with mechanical fasteners." TAES commented that the risers be accessible from the ground surface but no more than six inches below the ground and be sealed and mechanically fastened to the tank.

The commission responds that the rules specify that risers may extend to the surface in order to make access easier when necessary. Additionally, the concept of mechanically fastening risers to the tank was not accompanied by information which would clarify what is specifically meant by mechanical fastening. No changes were made in response to these comments.

TAES commented that §285.32(c)(2), be revised to include a reference to the need for port risers in §285.32(b)(1)(D).

The commission agrees that §§285.32(b)(1)(D), 285.32(c)(2), and 285.34(b)(1) should have the same requirements for risers as those for septic tanks. These sections have been modified to reflect this change.

POW and one individual commented that there needs to be clarification as to what constitutes "prevent unauthorized access" relating to inspection of cleanout ports, such as details concerning such things as bolt-down/screw-down lids or an actual lock.

The commission agrees in part with this comment but requiring specific types of devices to prevent unauthorized access would substantively change this section of the rules and would be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

Ft. Bend asked if the requirements in §285.32(b)(1)(E)(i) for precast concrete tanks apply only to septic tanks or do they apply to all precast concrete tanks, such as grease traps, pump tanks, proprietary treatment units, etc.

The commission responds that this requirement is for all precast septic tanks. The current requirements address construction requirements for pump and septic tanks while proprietary tank requirements are addressed in NSF Standard 40. No changes were made in response to this comment.

One individual commented that a verification include performance methods or calculations in conformance with the standard as providing a consistent method of verification per ASTM C 1227 in Sections 6 and 9.

The commission agrees that a professional engineer's verification is required but disagrees that these apply to Sections 6 and 9 in Standard C 1227 as they have been amended to Sections 5 and 6. No changes were made in response to these comments.

Bord Na Mona commented that specific leak testing requirements should be added to the rules as a requirement. TAES, POW, and one individual commented that the wording should be slightly modified to simplify the language for the height of leak testing in the riser, make leak testing a requirement, refer to leak testing in §285.32(c)(2), and the need for leaking testing in §285.32(b)(1)(H).

The commission responds that leak testing has been and should remain at the discretion of the permitting authority and not be prescriptive. However, the commission agrees with this comment to the extent of text for leak testing, but disagrees that it should be a requirement. The wording in §§285.32(b)(1)(H), 285.32(c)(2) and 285.34(b)(1) have been revised to reflect the changes.

POW and one individual commented that there needs to be a specification for the intermittent sand filter design loading rate of 1.2 gallons per day per square foot because it is intended for a buried sand filter and there needs to be a specification for how the filter bed is covered. POW and this individual also commented that installation requirements for proprietary systems need to be explicitly specified in the OSSF permit, and provided specific wording for requiring proprietary system installation requirements in the permit.

This commission responds that these comments would be best addressed in consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

CESC commented that treatment systems which spray effluent are subject to odor and other potential health hazards. Additionally, CESC commented that homeowners with these systems do not understand the higher costs of installing and maintaining these systems as compared to conventional systems. CESC encourages the commission to adopt rules which "facilitate the use of well-designed and less maintenance intensive systems.

The commission responds that soil diversity dictates the OSSF treatment and disposal system options within the State of Texas. While some systems inarguably are more expensive than others (including operation and maintenance), the goal is to have a number of options available to the public as to which system is best suited for their particular soil type. No changes were made in response to these comments.

BioMicrobics, Inc. commented that the current process for approving proprietary systems that are not NSF certified is cumbersome, and as a result, designers are including NSF-approved systems with parallel ATUs. This type of design may not provide proper dosing and there is not enough oversight to make certain that they are properly operated. Additionally, it was commented that the rules imply that ATUs cannot be used in parallel for flows greater than 1,500 gpd of residential strength sewage. BioMicrobics, Inc. also commented that the Environmental Technology Verification (ETV) process for approval should be an alternative to the current option for proprietary systems.

The commission responds that the rules require all permitting authorities to review and approve only those systems which will properly treat and dispose of effluent. The commission disagrees with the statement that the rules imply that flows in parallel ATU units cannot exceed 1,500 gpd in that there is no flow specification as long as the total permitted amount does not exceed 5,000 gpd. Finally, the ETV process may be a viable alternative for ATUs, but including such is beyond the scope of this rulemaking. No changes were made in response to this comment.

BioMicrobics, Inc. commented that NSF approved ATUs should never be allowed to treat anything but residential waste and that the rules allow a designer to only install a grease trap in front of an ATU. Additionally, BioMicrobics, Inc. commented that the rules need to require specific ATUs for restaurants with backup operational data.

The commission disagrees with this comment in that these proprietary units are tested with municipal waste and not strictly residential waste. Additionally, effluent limitations are one of the considerations a designer must include when designing a treatment and disposal system. The use of a grease trap is always an option but never an end-all to the overall design consideration. Finally, the commission disagrees with limiting the design options for the OSSF owner and disagrees that restaurants only

have ATUs specifically designed for them because the burden lies with the designer to determine the actual loadings in determining which system best accomplishes treatment and disposal. No changes were made in response to this comment.

POW and one individual commented that the rules do not address ATU suitability for effluent in specific cases when surface disposal is considered and that effluent limits should be more stringent than NSF Standard 40 for treatment.

The commission disagrees with this general statement because the design responsibility specifically includes consideration of the effluent quality and method of disposal for each design, including a treatment that may be higher than local permits require. No changes were made in response to this comment.

Bord Na Mona commented that the following should be added to §285.32(c)(1): "Proprietary treatment systems meeting the requirements of §285.32(f)(3) are not required to use Table II." Bord Na Mona also commented that this statement include their detailed provisions for flow equalization to coincide with the addition to §285.32(c)(1).

The commission responds that the suggestions concerning flow equalization merit further study and should be considered in future rulemaking. Additionally, the addition of these suggestions into the rules at this point would be considered increasing the scope of the rules. The Administrative Procedure Act requires that the public be given the opportunity to comment on rules that might impact them. No changes were made in response to this comment.

One individual commented that the rules reference the 1999 version of NSF Standard 40 and the rules should be updated to reflect the 2005 version.

The commission agrees with this comment. Revisions to §285.32(c)(5)(A) and §285.32(c)(6)(A) to reflect the latest version of NSF Standard 40 have been made.

TAES commented that the title "Approval of proprietary treatment systems" in §285.32(c)(5) should be changed to "Approval of proprietary treatment systems for residential sewage" and also commented that additional text should be added to address proprietary treatment system testing requirements for fats, oil, and grease in wastewater and that NSF testing protocol only applies to residential facilities.

The commission disagrees with these comments because they imply that proprietary treatment systems are exclusively for residential waste and would therefore exclude municipal waste. In fact, the NSF testing protocol involves municipal sewage - not exclusively residential waste - and contains varying amounts of commercial waste. No changes were made in response to this comment.

POW and one individual suggested wording that proprietary systems be used only under the condition where it absolutely conforms to commission approval, including stipulations, presumptions, conditions, etc. of the "certification" procedure through which it was approved. This individual commented that if this is not case, then it should be considered to be a non-standard system and permitted under the provisions of §285.32(d).

The commission acknowledges this comment and responds that it would create a substantive change to the rules and may be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

TSPE commented that current minimums standards for effluent are not adequate for disinfection for either chlorination or ultraviolet radiation. TSPE also commented that current rules allow spray disposal with BOD and Total Suspended Solids (TSS) levels up to 65 milligrams per liter (mg/l) which pose a health risk if not properly disinfected. Finally, TSPE commented that a grab sample and lowering the BOD and TSS effluent limits are more appropriate in order to satisfactorily achieve disinfection and provided two tables detailing these limits and sampling requirements for flows less than 1,000 gallons per day and greater than 1,000 gallons per day. POW and one individual commented that the grab sample test results be required to be at or below the 30-day average.

The commission agrees that lowering effluent limits and providing more assurance for disinfection could possibly provide greater public health protection. Additionally, TSPE did not provide justification for the 1,000 gallon per day delineation other than its contemplation in the Texas Occupations Code or data concerning its implication for the industry and general public relating to cost versus risk. No changes were made in response to these comments.

One individual commented that the TCEQ does not hold chlorinator maintenance in the same realm as ATU maintenance.

The commission disagrees with this statement because aerobic treatment of wastewater includes disinfection prior to surface disposal, and includes requirements for maintenance. No changes were made in response to these comments.

BioMicrobics, Inc. commented that not all restaurants produce the same quality of wastewater. They also commented that the requirement to reduce effluent quality to 140 mg/l BOD can cause maintenance and odor issues. Finally, they commented that flow equalization should be utilized and should allow for a reduction in treatment tank size.

The commission agrees that not all restaurants produce the same quality wastewater but disagrees that effluent quality of 140 mg/l BOD can cause maintenance and odor issues when used for subsurface disposal. While flow equalization is recommended, requiring additional tankage will most likely increase costs for system owners more so than increasing the size of the treatment unit. No changes were made in response to this comment.

Ft. Bend commented that most restaurant wastewater does not have an effluent strength of 1,200 mg/l BOD and that it is more appropriate to require the designer to consult peer literature during the design phase of the OSSF.

The commission agrees that not all restaurants produce the same quality wastewater but disagrees that the designer should only consult peer literature. It remains the designer's first responsibility to justify the actual effluent quality for OSSFs. In absence of actual data, the rules provide minimum acceptable assumptions. No changes were made in response to this comment.

One individual cited recommendations in a report from Bruce Lesikar, P.E., PhD, concerning minimum restaurant wastewater design strength and commented that 1,523 mg/l BOD should be the minimum instead of 1,200 mg/l BOD in order to prevent grotesquely undersized treatment systems.

The commission disagrees with using 1,523 mg/l BOD as a minimum assumptive BOD because Dr. Lesikar's data was from a relatively limited sampling of restaurants. Additionally, this min-

imum standard was considered by the named-member workgroup and the consensus was that a minimum requirement of 1,200 mg/l BOD was a reasonable increase over the prior requirement of 1,000 mg/l BOD. No changes were made in response to these comments.

POW and one individual recommended that §285.32(f)(2) include adding details to the designer's justification for the high strength waste stream quality by including the source and/or calculations used in the planning materials.

The commission disagrees only with the specific inclusion of these details for high strength sewage because the rules currently include the need for supporting data/documentation for assumptions/design details. No changes were made in response to these comments.

POW and one individual commented that the rules do not provide for anticipating overflows through ATUs during a power outage and suggested language that would address this.

The commission disagrees with this comment and proposed language because power outages decrease large waste stream contributions from washing machines and dishwashers. Implementing this suggested language would essentially require a significant pre-equalization tank that would only be used for storage during generally short-term power outages that may or may not be utilized and would add significant expense for the consumer. Also, current requirements already provide for additional storage for 1/3 of the day's flow to compensate for intermittent power outages. No changes were made in response to this comment.

Ft. Bend commented that the suggestion for the designer to consider flow equalization in §285.32(f)(3) be removed because it is unenforceable. One individual commented that it should be a requirement, not a recommendation.

The commission disagrees because considering flow equalization is an alternative that offers flexibility for OSSF designers. No changes were made in response to this comment.

CESC commented that the flow equalization tankage capacity needed to attenuate flow fluctuations is beyond the cost of what homeowners would be willing to afford for ATUs.

The commission disagrees with this comment in that NSF-approved ATU testing and approval contemplates and accounts for normal residential changes in flow patterns. Additionally, there is an option to consider flow equalization facilities when needed for non-standard flows, such as additional tankage, but it is not a requirement. No changes were made in response to this comment.

TAES commented that inspection ports should be required for all drainfields and provided suggested additions to the rules.

The commission fundamentally agrees with this statement and it may be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

One individual commented that there is no need for drainfield pipe under pressure to meet Schedule 40 requirements and that polyethylene type 200 polyvinyl chloride (PVC) pipe is sufficient.

The commission responds that all other OSSF pipe is required to meet the Schedule 40 requirement, with the exception of drip irrigation piping. The change in the requirement to include drainfield piping under pressure to meet Schedule 40 was to assure a consistency in the minimum pipe requirements and provide protection for surface loadings (from potential sources such as vehicles) that thinner walled pipe does not afford. No changes were made in response to this comment.

Grimes County Environmental commented that HB 2482 needs to be amended by strengthening NSF Standard 46 for chlorination devices so that approved treatment devices include approved disinfection devices, including liquid chlorinators that are lab tested and that will withstand the harsh environment within an ATU. LBC Manufacturing stated that while NSF Standard 40 addresses wastewater treatment units, the commission's minimum disinfection requirements should meet NSF Standard 46 and proposed the following addition to the current rules "All Disinfection devices must be NSF STD 46 approved." Harris County Public Infrastructure Department commented that the rules should incorporate requirements for NSF approved disinfection devices (Standard 46), as several counties have adopted. One individual commented that including Standard 46 more readily ensures proper effluent disinfection and prevents installers from installing anomalous home manufactured devices that may not properly provide disinfection.

The commission responds that it has no authority to amend legislation. Current requirements for disinfection are performance-based, which allows for a variety of devices to accomplish disinfection. The comments are well taken, but revising disinfection requirements may be best addressed through more consideration with workgroup input for future rulemaking. The commission notes Harris County Public Infrastructure Division's statement and agrees that all permitting authorities are allowed to adopt stricter requirements - including those for ATU disinfection. No changes were made in response to this comment.

POW and one individual commented that the disposal spray requirements do not consider the potential for as much as 200 feet of drift and the existing 20 foot setback is insufficient.

The commission responds that while the rules allow spray disposal, drift is minimized through several requirements, including low angle spraying and utilizing spray heads with large droplets instead of a mist, and mitigated by spraying only at night. No changes were made in response to these comments.

POW and one individual commented that §285.33(d)(1) should be corrected to provide higher loading rates for low pressure-dosed systems. This individual commented that the rules should allow for trench widths less than 6 inches and trench depths less than 12 inches. POW and this individual commented that §285.33(d)(2) did not contain an adequate description of what is "proper" landscaping and "terraced" for slopes greater than 15% for effluent disposal and provided suggested changes to the rules. POW and this individual commented that §285.33(d)(2)(D) should be modified to require a clarity monitor for checking disinfection. POW and this individual commented that §285.33(d)(2)(E) needs to allow for interpolation between the values for the application rates in the Table in §285.91(1). POW and this individual also commented that §285.33(d)(2)(G)(iii) is deficient and should be eliminated while §285.32(d)(2)(G)(iv) and (v) is out of place under "Uniform application of effluent" and should be moved to a new section, entitled "Distribution piping". POW and this individual commented that §285.33(d)(4) "remains DUMB, very environmentally unsound idea" while §285.33(d)(5) also are "a DUMB, high irresponsible idea."

The commission acknowledges these comments and responds that these sections may be best addressed through more consid-

eration with workgroup input for future rulemaking. No changes were made in response to these comments.

POW and one individual provided a re-written version of §285.34(b) with new requirements.

The commission acknowledges these comments and responds that these changes are both substantive and would be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to these comments.

One individual commented that requirements tied to a professional engineer's license conflicts with the Texas Attorney General's Opinion JA-0020 (1999).

The commission disagrees because the PE license is one of the avenues for maintaining licensure as a site evaluator. Since the commission sets the requirements for a site evaluator's license, it has the ability to place requirements for maintaining this licensure on any applicant or licensee. No changes were made in response to this comment.

TEHA commented that the proposed revision in §285.62 for requiring a DR to obtain written permission to perform on-site related work in areas beyond their jurisdiction is inadequate and would induce DRs to consciously or otherwise conduct themselves in an unethical manner and approve inadequate design and installation of OSSFs. In turn, TEHA states, this written permission would place "the authorized agent in an awkward and precarious legal position" and the proposed language would be an "impediment to DRs performing any work on the side." TEHA states that they do "not suggest that designated representatives should be prohibited from working in OSSF-related businesses as a sideline to their official duties." As a result, TEHA proposes the following substitute language to §285.62(22)(F) as follows:

"Performing any regulatory function in their official capacity as designated representative for persons they otherwise receive, or have received, compensation from for private OSSF-related business enterprises in which they are engaged."

The commission responds that the language in this comment differs from TEHA's original petition, dated April 25, 2007, which requested the commission make a rule change to require that DRs refrain from any OSSF-related activity in areas beyond their regulatory jurisdiction. While TEHA's proposed language is slightly less restrictive than that found in the original petition, the commission notes that it would nonetheless limit the ability for all DRs to work in areas beyond their jurisdiction and could also impact AAs with limited DR support. The commission responds that TEHA's comment, concerning DRs does not acknowledge the importance of the employer remaining aware of potential conflicts with its employees. TWC, §7.303 can be used in prosecuting conflicts of interest. No changes were made in response to this comment.

Lubbock County commented that they oppose the additional requirement for DRs because it is rooted in a local dispute and not a state-wide problem.

The commission acknowledges the comment. No changes were made in response to this comment.

The LCRA commented that OSSF licensees who are DRs should have the right to perform OSSF-related work in areas beyond their jurisdiction on their personal time. They additionally commented that the employment relationship between an AA and the DR already includes an AA's authority to discipline a DR for misconduct and the new requirement is redundant.

The commission acknowledges this comment. No changes were made in response to this comment.

One individual commented that neither TEHA nor the commission has the right to specify whether or not a DR could perform work in areas beyond their jurisdiction.

The commission disagrees with this comment as it is allowed under the general authority to create rules under THSC, Chapter 366. No changes were made in response to this comment.

One individual commented that they are a DR but are unaware of any conflict interest problems and is opposed to the petition.

The commission acknowledges the comment. No changes were made in response to this comment.

The Parker County Health Department commented that DRs performing work in areas beyond their jurisdiction is nobody's business and twice commented that conflicts of interest would best be resolved on a local level.

The commission agrees that conflicts of interest can be resolved on a local level but responds that the commission has the authority to create rules under THSC, Chapter 366. No changes were made in response to this comment.

Bailey Environmental commented that they will cease performing DR work if the prohibition against performing work in areas beyond their jurisdiction is adopted.

The commission responds that the rules for adoption do not prohibit a DR from performing OSSF-related work in areas beyond their jurisdiction. No changes were made in response to this comment.

The Tarrant County Health Department commented that regulating DR work in areas beyond their jurisdiction will reduce the number of qualified individuals from doing work in certain areas and that conflicts of interest are best resolved on a local level. Additionally, the Tarrant County Health Department commented that as a result, consumers are less likely to obtain a proper site evaluation, design, permits, fees and inspections. Xyron Environmental commented that they cannot think of any possible productive or real reason and it would be one more example of petty regulations for requiring DRs to obtain permission from their AA. Additionally, one individual was against requiring an AA's permission to perform work in areas beyond their jurisdiction.

The commission responds that it is vital that an AA be aware of the potential for its employee's conflicts of interest and requiring a written consent will not necessarily reduce the number of qualified individuals. The commission agrees that enforcement and disciplinary action of DRs may also be resolved on a local level. Finally, none of these commenters presented evidence supporting the possibility that consumers will obtain inadequate site evaluation, design, permit, fees or inspections because of the requirement. No changes were made in response to this comment.

One individual commented that a prohibition on DRs performing work in areas beyond their jurisdiction is a violation of their right to earn a living and this individual is against requiring that a DR obtain permission from the AA to perform this work.

The commission responds that the rules for adoption do not prohibit a DR from performing work in areas beyond their jurisdiction and that the commission has the authority to create rules under

THSC, Chapter 366. No changes were made in response to these comments.

Koller & Son Septic Service commented that eliminating the need for a maintenance provider to work in a company under an Installer II may affect the availability of professionals to work on ATUs needing repair.

The commission disagrees with this statement and responds that the rules require all maintenance technicians to work under the direct supervision of a licensed maintenance provider. Additionally, the new requirements for licensure include holding a current Installer II license, a Wastewater C license, or three years experience as a registered maintenance provider. No changes were made in response to these comments.

Environmental Construction Services and six individuals commented that background checks should be required for maintenance technicians by the maintenance provider.

The commission declines to require that maintenance providers perform background checks on the maintenance technicians they employ because the commission has not evaluated the related costs to employers or small businesses to perform such background checks. Furthermore, the commission has not adopted requirements that affect the hiring practices of maintenance providers or other licensees. No changes were made in response to this comment.

Environmental Construction Services and six individuals commented that liability insurance should be required for maintenance providers. One of these individuals commented however, that it should not limit individuals from being in the industry.

The commission responds that TWC, §37.002 authorizes the commission to adopt rules to establish occupational licenses and registrations and to administer the program. TWC, §37.005(a) directs the commission to establish requirements for issuing those licenses. However, unlike other programs administered by the commission, there is no express statutory authority to require liability insurance for maintenance providers. There is no legislative direction on what specific terms or conditions to require in a policy, such as who would be the payee on the policy or the amount of liability insurance to require. Therefore, no changes were made in response to this comment.

POW and one individual commented that there is no assurance that the licenses for non-performing maintenance providers will be suspended and objected to the use of the word "may" in prosecuting these non-performers.

The commission responds that the commission may revoke, suspend, or deny renewal of a license or registration based on the evidence provided. The use of the word "may" allows the commission to consider extenuating circumstances in a suspension or revocation of a registration or license. No changes were made in response to this comment.

One individual suggested adding "Unless holding a license as a maintenance provider" as a prerequisite to §285.64(b)(6) where a maintenance technician cannot advertise or otherwise portray themselves as a maintenance provider.

The commission responds that because §285.64(b)(6) applies only to maintenance technicians, this additional wording would be redundant and confusing because a maintenance technician's registration will end once that individual becomes a licensed maintenance provider. The same applies to current installer licensees who were previously apprentices, i.e., the apprentice registration ends once the individual becomes licensed as an installer. No changes were made in response to this comment.

One individual commented that a site evaluator's license should not be revoked for those who do not maintain a PE's license because licensing a site evaluator conflicts with the Texas Attorney General's Opinion JA-0020 (1999).

The commission responds that this comment may be confused with what is required by the PE Board and the commission relating to their respective requirements for licensing. The commission has the authority to establish requirements for obtaining and renewing commission-issued licenses. While the commission agrees it has no authority to place requirements on obtaining or renewing a PE's license, it specifically has the authority to place requirements on those licensed or registered by the commission. No changes were made in response to this comment.

POW and one individual commented that while §285.90(3), Figure 3, includes requirements for monitoring sludge condition, it should require that a jar test be included for each maintenance inspection.

The commission responds that while a jar test may be used to determine sludge condition, other options for determining sludge condition should be allowed as well. No changes were made in response to this comment.

TSPE proposed higher effluent application rates for pressure distribution in §285.91(1), Table 1, than currently specified.

The commission responds that while higher application rates may be justified this technical aspect would be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

One individual commented that an oversight has been created resulting in potential problems by leaving out the "equal to" symbol for Class IV soils since no other application rate is specified provided in §285.91(1).

The commission disagrees that an oversight exists. Designers utilize this table with specific soil values to size disposal areas. Adding an equal sign to Class IV soils is not pertinent and is beyond the scope of this rulemaking. No changes were made in response to this comment.

Bord Na Mona commented that §285.91(2) include adding a three-bedroom or less category to the "Aerobic Treatment Unit Sizing for Residences" table as follows:

Figure: 30 TAC Chapter 285--Preamble

Ft. Bend commented that this table does not address residences with less that three bedrooms and less than 2,500 sq. ft. and that it be reconfigured to include ranges "up to" certain limits.

The commission agrees with this comment and has revised §285.91(2) to consider the additional category and unit sizing.

The LCRA commented that this proposal would require substantially larger ATUs for single family dwellings and that the reasoning for doing so should be made clear because if the increased capacity requirement is related to inherent problems with these systems, the commission should be working with NSF instead of revising the rules.

The commission responds that the impetus behind this change was based on discussion with the workgroup concerning peak flows and the potential for overflows. The workgroup's consen-

sus was that slightly increasing the treatment basin capacity would resolve this issue when the actual flows exceed the designer's data. In doing so, it would minimize the cost for the consumer and resolve the concern. No changes were made in response to this comment.

The LCRA commented that §285.91(3), Table III should include mobile homes in the same category as single family dwellings because the average flows are the same.

The commission responds while that §285.91(3) indicates that the assumed flow rates for mobile homes and residences are identical, the mobile home category was included during a prior rule change to respond to numerous inquiries concerning presumptive wastewater flows for mobile homes. No changes were made in response to this comment.

TSPE commented that fecal coliform testing is a more representative test of pathogenic risk than chlorine residual and that the chlorine residual should be higher than 0.1 mg/l. Additionally, one individual commented that the 0.10 mg/l chlorine residual is insufficient to reduce fecal counts to less than 200 based on actual experience of checking hundreds of units.

The commission responds that the commenters did not provide what acceptable chlorine residual would be preferred in lieu of the current standard. The current standard is not intended to provide a total inactivation of fecal count - only an alternative to the <200 most probable number (MPN) standard. The rules require a permitting authority to issue a notice of violation to any permittee whose ATU exceeds the maximum requirement. No changes were made in response to this comment.

TSPE provided additional requirements for required testing and reporting for proprietary activated sludge-based secondary treatment units, non-activated sludge proprietary secondary treatment systems, engineered intermittent sand filters and engineered recirculating sand/gravel filters.

The commission responds that the testing proposed by TSPE is less stringent than those currently required for these systems. Reducing current testing and reporting requirements is not justified by simply stating that current maintenance requirements for these systems is excessive and discourages the use of these systems. No changes were made in response to these comments.

POW and one individual commented that §285.91(4), Table IV is confusing because it confuses water quality standards with permitting classifications and commented that "any secondary treatment systems" require no tests or minimal acceptable results, yet non-standard systems are "permit specific" for testing and minimum testing results.

The commission responds that while it disagrees with these characterizations, these comments may be best addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to these comments.

POW and one individual commented that the testing frequency in Table IV is not specific enough because it leaves the final decision for testing frequency to "unschooled" permitting authorities.

The commission disagrees with these comments and responds that the commenter did not provide supporting facts or specific instances for justifying these comments. No changes were made in response to these comments.

Bord Na Mona commented that §285.91(9) changes the designation for planning material to be prepared by a PE or registered sanitarian from "Engineer Only" to "Yes" for non-standard treatment system designs when secondary treatment is required.

The commission disagrees with this comment because designing non-standard, secondary treatment systems requires a detailed knowledge of wastewater treatment theories and concepts most widely found in the engineering profession. No changes were made in response to this comment.

Ft. Bend commented that the table found in §285.91(10) did not show the separation distance between overhead easements and the OSSF without the owner's permission.

The commission agrees with this comment and has revised §285.91(10) to show requirements for this type of overhead easement separation distances.

Environmental Construction Services commented that there should be no difference between aerial and underground easements unless a public water line is in the underground easement because it will cost the homeowner with drip disposal more money.

The commission disagrees with this comment because there is a difference between underground and overhead easements in that underground easements are intended for underground utilities and additional excavation area may be needed by the utility. This would impact a subsurface system within that easement. No changes were made in response to this comment.

The LCRA commented that the setback requirements for sleeved piping be reduced from five to zero foot setback, similar to the requirements for driveways and sidewalks.

The commission agrees with this comment. Section 285.91(10) has been changed to specify a zero foot setback for sleeved piping.

Environmental Construction Services commented that while it is wise to do so, there should not be a requirement to sleeve under and existing concrete driveway or side walk because it will cost homeowners more money.

The commission disagrees with removing the requirement for several reasons. Current requirements expressly do not allow OSSF piping under surface improvements, including driveways and sidewalks. Many permitting authorities have allowed pipe under these surface improvements as long as equal or greater protection is provided through installations such as pipe sleeves. The commission agrees that pipe sleeves provide equal or greater protection. This change was to allow designers and permitting authorities the ability to sleeve piping under these surface improvements in order to save owners the cost of re-piping around these surface improvements without having to request a variance to the rules. No changes were made in response to this comment.

One individual commented that no known problem exists with a property owner spraying into an easement and that no satisfactory explanation has been provided for the proposed changes in §285.91(10) Table X that would prevent surface application disposal into an easement within a person's property they currently maintain. This individual also asked what seepage occurs with a surface application system.

The commission disagrees with the premise that no known problems exist relating to surface spray disposal into an easement - especially when there are underground electrical lines within the

easement. The commission is unaware of seepage relating to surface application of effluent. No changes were made in response to this comment.

POW and one individual commented that in the category "Slopes Where Seeps May Occur" in §285.91(10), horizontal seeps are rare and the rules hamper drip disposal as an option.

The commission disagrees that the rules hamper drip disposal as an option because the potential for a horizontal route for contamination to travel nonetheless exists and remains a concern with the potential for vertical conduit to groundwater. No changes were made in response to this comment.

Ft. Bend commented that the table found in §285.91(12) states that there are no testing and reporting requirements for secondary treatment with a filter and drip emitter or secondary treatment with low pressure dosing. Ft. Bend commented that these systems may be installed closer to bodies of water when they include disinfection and that they should therefore be subject to testing and reporting requirements.

The commission agrees with this comment and while it can be addressed on a local level through permit conditions in §285.3(a)(4) and under an AA's authority to adopt more stringent requirements, it can be addressed through more consideration with workgroup input for future rulemaking. No changes were made in response to this comment.

Environmental Construction Services commented that drip disposal systems should have the same requirements for vertical distance to groundwater as surface irrigation. Bord Na Mona commented that since surface spray systems with disinfection have no separation to groundwater or restrictive horizon requirements, the same should apply to subsurface disposal systems when disinfection is included.

The commission disagrees with this comment. Spray irrigation does not result in a hydraulic backup over groundwater or a restrictive horizon since surface application systems are applied at a lower hydraulic rate and benefit from evaporation at the soil surface. Subsurface disposal methods will not benefit from evaporation and are typically applied at a much higher hydraulic rate. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§285.2 - 285.5, 285.7, 285.8

STATUTORY AUTHORITY

These amendments and new section are adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments and new section are also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments and new section are further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These adopted amendments and new section implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Aerobic digestion--The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(2) Alter--To change an on-site sewage facility resulting in:

(A) an increase in the volume of permitted flow;

(B) a change in the nature of permitted influent;

(C) a change from the planning materials approved by the permitting authority;

(D) a change in construction; or

(E) an increase, lengthening, or expansion of the treatment or disposal system.

(3) Anaerobic digestion--The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) Apprentice--An individual who has been properly registered with the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations), and is undertaking a training program under the direct supervision of a licensed installer.

(5) Authorization to construct--Written permission from the permitting authority to construct an on-site sewage facility showing the date the permission was granted. The authorization to construct is the first part of the permit.

(6) Authorized agent--A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.

(7) Borehole--A drilled hole four feet or greater in depth and one to three feet in diameter.

(8) Certified professional soil scientist--An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) Cesspool--A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(10) Cluster system--A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(11) Commercial or institutional facility--Any building that is not used as a single-family dwelling or duplex.

(12) Compensation--A payment to construct, alter, repair, extend, maintain, or install an on-site sewage facility. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(13) Composting toilet--A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(14) Condensate drain--A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(15) Construct--To engage in any activity related to the installation, alteration, extension, or repair of an on-site sewage facility (OSSF), including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(16) Delegate--The executive director's act of assigning authority to implement the on-site sewage facility program under this chapter.

(17) Designated representative--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations), and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on on-site sewage facilities.

(18) Direct communication--The demonstrated ability of an installer and the apprentice to communicate immediately with each other in person, by telephone, or by radio.

(19) Direct supervision--The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an on-site sewage facility, or the responsibility of a maintenance provider to oversee, direct, and approve all actions of a maintenance technician relating to the maintenance of an on-site sewage facility.

(20) Discharge--To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) Edwards Aquifer Recharge Zone--That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the agency's central office and in the appropriate regional office, or as amended by Chapter 213 of this title (relating to Edwards Aquifer).

(23) Extend--To alter an on-site sewage facility resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(24) Floodplain (100-year)--Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(25) Floodway--The channel of a watercourse and the adjacent land areas (within a portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(26) Geotextile filter fabric--A non-woven fabric suitable for wastewater applications.

(27) Gravel-less drainfield pipe--An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(28) Grease interceptor--Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(29) Groundwater--Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(30) Holding tank--A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(31) Individual--A single living human being.

(32) Install--To put in place or construct any portion of an on-site sewage facility.

(33) Installer--An individual who is compensated by another to construct an on-site sewage facility.

(34) Local governmental entity--A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(35) Maintenance--Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an on-site sewage facility, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(36) Maintenance findings--The results of a required performance check or component examination on a specific on-site sewage facility.

(37) Maintenance provider--An individual who maintains on-site sewage facilities for compensation. Through August 31, 2009, a maintenance company is a person or business that maintains on-site sewage facilities for compensation.

(38) Maintenance technician--An individual who holds a valid registration issued by the executive director to maintain on-site sewage facilities and works under a maintenance provider.

(39) Malfunctioning OSSF--An on-site sewage facility that is causing a nuisance or is not operating in compliance with this chapter.

(40) Manufactured housing community--Any area developed or used for lease or rental of space for two or more manufactured homes.

(41) Multi-unit residential development--Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(42) Notice of approval--Written permission from the permitting authority to operate an on-site sewage facility. The notice of approval is the final part of the permit.

(43) Nuisance--

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage facility; or

(C) a blatant discharge from an OSSF.

(44) On-site sewage disposal system--One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(45) On-site sewage facility (OSSF)--An on-site sewage disposal system.

(46) On-site waste disposal order--An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(47) Operate--To use an on-site sewage facility.

(48) Owner--A person who owns property served by an on-site sewage facility (OSSF), or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(49) Owner's agent--An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(50) Permit--An authorization, issued by the permitting authority, to construct or operate an on-site sewage facility. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(51) Permitting authority--The executive director or an authorized agent.

(52) Planning material--Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(53) Platted--The subdivision of property which has been recorded with a county or municipality in an official plat record.

(54) Pretreatment tank--A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(55) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(56) Professional sanitarian--An individual registered by the Texas Department of State Health Services to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(57) Proprietary system--An on-site sewage facility treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(58) Recharge feature--Permeable geologic or manmade feature located on the Edwards Aquifer Recharge Zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the on-site sewage facility to the subsurface may occur.

(59) Recreational vehicle park--A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(60) Regional office--A regional office of the agency.

(61) Repair--To replace any components of an on-site sewage facility (OSSF) in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(62) Scum--A mass of organic or inorganic matter which floats on the surface of sewage.

(63) Secondary treatment--The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(64) Seepage pit--An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(65) Septic tank--A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(66) Sewage--Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(67) Single family dwelling--A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(68) Site evaluator--An individual who holds a valid license issued by the executive director according to Chapter 30 of this title (relating to Occupational Licenses and Registrations) and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage facility. A professional engineer may perform site evaluations without obtaining a site evaluator license.

(69) Sludge--A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(70) Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(71) Soil absorption system--A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(72) Subdivision--A division of a tract of land, regardless of whether it is made by using a metes and bounds description in a deed

of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(73) Testing and reporting--Routine inspection, sampling and performance checks performed by the maintenance provider or maintenance technician and the submittal of findings to the OSSF owner and the permitting authority. Testing and reporting does not include repair or replacement of parts.

(74) Well--A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under Texas Water Code, Chapters 26, 32, and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

§285.3. General Requirements.

(a) Permit required. A person shall hold a permit for an OSSF unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) All aspects of the permitting, planning, construction, operation, and maintenance of OSSFs shall be conducted according to this chapter, or according to an order, ordinance, or resolution of an authorized agent.

(2) The executive director is the permitting authority unless a local governmental entity has an OSSF order, ordinance, or resolution approved by the executive director. In areas where the executive director is the permitting authority, the staff from the appropriate regional office shall be responsible for the proper implementation of this chapter.

(3) Permits shall be transferred to a new owner automatically upon sale or other legal transfer of an OSSF.

(4) Conditioning of Permits. The permitting authority may require conditions to a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval. Failure to comply with these conditions is a violation of the permit and this chapter. Any violation of a condition of a permit that would be considered an alteration as defined in §285.2(2) of this title (relating to Definitions) would require a new permit.

(b) General Application Requirements.

(1) The owner or owner's agent must obtain an authorization to construct from the permitting authority before construction may begin on an OSSF. Before an authorization to construct can be issued, the permitting authority shall require submittal of the following from the owner or owner's agent:

(A) an application, on the form provided by the permitting authority;

(B) all planning materials, according to §285.5 of this title (relating to Submittal Requirements for Planning Materials);

(C) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation); and

(D) the appropriate fee.

(2) Variance requests shall be submitted with the application and shall be reviewed by the permitting authority according to subsection (h) of this section.

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record an affidavit in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the affidavit is located in §285.90(2) of this title (relating to Figures). The affidavit must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring continuous maintenance is located on the property;

(D) that the permit for the OSSF is transferred to the new owner upon transfer of the property; and

(E) that at any time after the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days of the transfer or maintain the system personally.

(c) Action on Applications. The permitting authority shall either approve or deny an application within 30 days of receiving an application. If the application and planning materials are approved, the permitting authority shall issue an authorization to construct. If the application and planning materials are denied, the permitting authority shall explain the reasons for the denial in writing to the owner, and the owner's agent.

(d) Construction and Inspection.

(1) An authorization to construct is valid for one calendar year from the date of its issuance. If the installer does not request a construction inspection by the permitting authority within one year of the issuance of the authorization to construct, the authorization to construct expires, and the owner will be required to submit a new application and application fee before an OSSF can be installed. A new application and application fee are not required if the owner decides not to install an OSSF.

(2) The installer shall notify the permitting authority at least five working days (Monday through Friday, excluding holidays) before the date the OSSF will be ready for inspection.

(3) The permitting authority shall conduct a construction inspection.

(4) If the OSSF does not pass the construction inspection, the permitting authority shall:

(A) at the close of the inspection, advise the owner and the owner's agent, if present, of the deficiencies identified and that the OSSF cannot be used until it passes inspection; and

(B) within seven calendar days after the inspection, issue a letter to the owner and the owner's agent listing the deficiencies identified and stating that the OSSF cannot be used until it passes inspection.

(5) If a reinspection is necessary, a reinspection fee may be assessed by the permitting authority.

(6) The reinspection fee must be paid before the reinspection is conducted.

(e) Notice of Approval.

(1) Within seven calendar days after the OSSF has passed the construction inspection, the permitting authority shall issue, to the owner or owner's agent, a written notice of approval for the OSSF.

(2) The notice of approval shall have a unique identification number, and shall be issued in the name of the owner.

(f) Exceptions.

(1) An owner of an OSSF will not be required to comply with the permitting, operation, and installation requirements of this chapter if the OSSF is not creating a nuisance and:

(A) the OSSF was installed before September 1, 1989, provided the system has not been altered, and is not in need of repair;

(B) the OSSF was installed before the effective date of the order, ordinance, or resolution in areas where the local governmental entity had an approved order, ordinance, or resolution dated before September 1, 1989, provided the system has not been altered and is not in need of repair; or

(C) the owner received authorization to construct from a permitting authority before the effective date of this chapter.

(2) No planning materials, permit, or inspection are required for an OSSF for a single family dwelling located on a tract of land that is ten acres or larger and:

(A) the OSSF is not causing a nuisance or polluting groundwater;

(B) all parts of the OSSF are at least 100 feet from the property line;

(C) the effluent is disposed of on the property; and

(D) the single family dwelling is the only dwelling located on that tract of land.

(3) Connecting recreational vehicles or manufactured homes to rental spaces is not considered construction if the existing OSSF system is not altered.

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively):

(1) one or more systems that cumulatively treat and dispose of more than 5,000 gallons of sewage per day on one piece of property;

(2) any system that accepts waste that is either municipal, agricultural, industrial, or other waste as defined in Texas Water Code, Chapter 26;

(3) any system that will discharge into or adjacent to waters in the state; or

(4) any new cluster systems.

(h) Variances. Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on a case-by-case basis.

(1) A variance may be granted if the owner, or a professional sanitarian or professional engineer representing the owner, demonstrates to the satisfaction of the permitting authority that conditions are such that equivalent or greater protection of the public health and the environment can be provided by alternate means. Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met.

(2) Any request for a variance under this subsection must contain planning materials prepared by either a professional sanitarian or a professional engineer (with appropriate seal, date, and signature).

(i) Unauthorized systems. Boreholes, cesspools, and seepage pits are prohibited for installation or use. Boreholes, cesspools, and seepage pits that treat or dispose of less than 5,000 gallons of sewage per day shall be closed according to §285.36 of this title (relating to Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits). Boreholes, cesspools, and seepage pits that exceed 5,000 gallons of sewage per day must be closed as a Class V injection well under Chapter 331 of this title (relating to Underground Injection Control).

§285.4. Facility Planning.

(a) Land planning and site evaluation. Property that will use an OSSF for sewage disposal shall be evaluated for overall site suitability. For property located on the Edwards Aquifer recharge zone, see §285.40 of this title (relating to OSSFs on the Recharge Zone of the Edwards Aquifer) for additional requirements. The following requirements apply to all sites where an OSSF may be located.

(1) Residential lot sizing.

(A) Platted or unplatted subdivisions served by a public water supply. Subdivisions of single family dwellings platted or created after the effective date of this section, served by a public water supply and using individual OSSFs for sewage disposal, shall have lots of at least 1/2 acre.

(B) Platted or unplatted subdivisions not served by a public water supply. Subdivisions of single family dwellings platted or created after the effective date of this section, not served by a public water supply and using individual OSSFs, shall have lots of at least one acre.

(2) Manufactured housing communities or multi-unit residential developments. The owners of manufactured housing communities or multi-unit residential developments that are served by an OSSF and rent or lease space shall submit a sewage disposal plan to the permitting authority for approval. The total anticipated sewage flow for the individual tract of land shall not exceed 5,000 gallons per day. The plan shall be prepared by a professional engineer or professional sanitarian. This plan is in addition to the requirements of subsection (c) of this section.

(b) Approval of OSSF systems on existing small lots or tracts.

(1) Existing small lots or tracts that do not meet the minimum lot size requirements under subsection (a)(1)(A) or (B) of this section, and were either subdivided before January 1, 1988, or had a site-specific sewage disposal plan approved between January 1, 1988, and the effective date of this section, are allowed to use OSSFs, but the OSSFs must comply with the requirements set forth in this Chapter.

(2) The owner of a single family dwelling on an existing small lot or tract (property 1) may transport the wastewater from the dwelling to an OSSF at another location (property 2) provided that:

(A) both properties (properties 1 and 2) are owned by the same person;

(B) the owner or owner's agent demonstrates that no OSSF authorized under these rules can be installed on the property which contains the single-family dwelling (property 1);

(C) if property not owned by the owner of properties 1 and 2 must be crossed in transporting the sewage, the application includes all right-of-ways and permanent easements needed for the sewage conveyance lines; and

(D) the application includes an affidavit indicating that the owner or the owner's agent recorded the information required by §285.3(b)(3) on the real property deeds of both properties (properties 1 and 2). The deed recording shall state that the properties cannot be sold separately.

(c) Review of subdivision or development plans. Persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar structures that use OSSFs for sewage disposal shall submit

planning materials for these developments to the permitting authority and receive approval prior to submitting an OSSF application.

(1) The planning materials must be prepared by a professional engineer or professional sanitarian and must include:

(A) an overall site plan;

(B) a topographic map;

(C) a 100-year floodplain map;

(D) a soil survey;

(E) the locations of water wells;

(F) the locations of easements, as identified in §285.91(10) of this title (relating to Tables);

(G) a comprehensive drainage plan;

(H) a complete report detailing the types of OSSFs to be considered and their compatibility with area-wide drainage and groundwater; and

(I) other requirements, including Edwards Aquifer requirements that are pertinent to the proposed OSSF.

(2) If the proposed development includes restaurants or buildings with food service establishments, the planning materials must show adequate land area for doubling the land needed for the treatment units. The designer may consider increasing the amount of land area for the treatment units beyond doubling the minimum required area.

(3) The permitting authority will either approve or deny the planning materials, in writing, within 45 days of receipt.

§285.7. Maintenance Requirements.

(a) Maintenance contract requirements. Maintenance contract requirements for all on-site sewage facilities (OSSFs) are identified in §285.91(12) of this title (relating to Tables). The permit holder shall ensure that the OSSF is properly operated and maintained in accordance with this chapter. Homeowners who maintain their own systems are exempt from contract requirements, as provided in subsection (d)(4) of this section.

(b) Maintenance provider.

(1) Effective September 1, 2009, in order to perform maintenance on an OSSF, an individual must either be licensed by the TCEQ as a maintenance provider or registered by the TCEQ as a maintenance technician and employed by a licensed maintenance provider. Prior to September 1, 2009, in order to perform maintenance on an OSSF, an individual must be registered by the TCEQ as a maintenance provider.

(2) Effective September 1, 2009, the maintenance provider will be responsible for fulfilling the requirements of the maintenance contract. The maintenance provider will be responsible for the work performed by registered maintenance technicians under their direct supervision. Prior to September 1, 2009, the maintenance company will be responsible for fulfilling the requirements of the maintenance contract.

(3) Effective September 1, 2009, the maintenance provider must sign all maintenance reports.

(c) Initial Two-Year Service Policy. The initial two-year service policy shall be effective for two years from the date the OSSF is first used. For a new single family dwelling, this date is the date of sale by the builder. For an existing single family dwelling this date is the date the notice of approval is issued by the permitting authority. The owner, or owner's agent shall provide the permitting authority with a copy of the signed initial two-year service policy before the system is approved for use. The initial service policy shall meet the minimum guidelines for maintenance contracts, as described in §285.7(d)(1)(A) - (E) and the individual fulfilling the service policy shall be a maintenance provider or a maintenance technician working under the supervision of a maintenance provider.

(d) Maintenance contracts. OSSFs required to have maintenance contracts are identified in §285.91(12) of this title.

(1) Contract provisions. The OSSF maintenance contract shall, at a minimum:

(A) list items that are covered by the contract;

(B) specify a time frame in which the maintenance provider or maintenance technician will visit the property in response to a complaint by the property owner regarding the operation of the system;

(C) specify the name of the maintenance provider who is responsible for fulfilling the terms of the maintenance contract;

(D) identify the frequency of routine maintenance and the frequency of the required testing and reporting;

(E) identify who is responsible for maintaining the disinfection unit; and

(F) indicate the business physical address and telephone number for the maintenance provider.

(2) Contract submittals. Unless the owner maintains the system, as excepted by paragraph (4) of this subsection, a copy of the signed maintenance contract shall be provided by the owner to the permitting authority 30 days before the expiration of the initial two-year service policy. For the time period after the initial two-year service policy, the owner is required to have a new maintenance contract signed and submitted to the permitting authority at least 30 days before the contract expires unless the owner maintains the system, as excepted by paragraph (4) of this subsection.

(3) Amendments or terminations.

(A) Effective September 1, 2009, if the maintenance provider discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease. Prior to September 1, 2009, if the maintenance company discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease.

(B) Effective September 1, 2009, if the owner discontinues the maintenance contract, the maintenance provider shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease. Prior to September 1, 2009, if the owner discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority and the manufacturer at least 30 days before the date service will cease.

(C) Effective September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance provider and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days after termination, unless the owner meets the requirements of paragraph (4) of this subsection. Prior to September 1, 2009, if a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance company and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days af-

ter termination, unless the owner meets the requirements of paragraph (4) of this subsection.

(4) Exceptions to maintenance contract. At the end of the initial two-year service policy, the owner of an OSSF for a single family residence shall either maintain the system personally or obtain a new maintenance contract.

(A) If the residence is sold before the end of the initial two-year service policy period, the terms of the initial service policy will apply to the new owner.

(B) An owner may not maintain an OSSF under the provisions of this section for commercial, speculative residential, or multifamily property.

(e) Testing and reporting. OSSFs that must be tested are identified in §285.91(12) of this title.

(1) Effective September 1, 2009, the maintenance provider shall test and report for each system as required in §285.91(12) of this title. Prior to September 1, 2009, the maintenance company shall test and report for each system as required in §285.91(12) of this title. The report must:

(A) include any responses to owner complaints; the results of the maintenance provider's findings as described in §285.90(3) of this title (relating to Figures) and the test results as required in §285.91(4) of this title, including procedures for the maintenance of the unit approved by the executive director; and

(B) be submitted to the permitting authority and the owner within 14 days after the date the test is performed.

(2) To provide the owner with a record of the maintenance check, the maintenance provider shall install a weather resistant tag, or some other form of weather resistant identification, on the system at the beginning of each maintenance contract. This identification shall:

(A) identify the maintenance provider;

(B) list the telephone number of the maintenance provider;

(C) specify the start date of the contract; and

(D) be either punched or indelibly marked with the date the system was checked at the time of each maintenance check, including any maintenance check in response to owner complaints.

(3) The number of required tests may be reduced to two per year for all systems having electronic monitoring and automatic telephone or radio access that will notify the maintenance provider of system or components failure and will monitor the amount of disinfection in the system. The maintenance provider shall be responsible for ensuring that the electronic monitoring and automatic telephone or radio access systems are working properly.

(4) The owner of an OSSF for a single family residence who elects to maintain their unit through the exemption described in subsection (d)(4) of this section is not subject to testing and reporting requirements.

(f) Replacement parts. The manufacturer of the installed on-site aerobic system shall make available to the homeowner all replacement parts for that aerobic system to any homeowner who elects to maintain the on-site aerobic system as identified in subsection (d)(4) of this section. The manufacturer shall also make replacement parts available to installers and maintenance providers. Failure to do so may result in removal of the manufacturer's product(s) from the list of approved systems.

(g) Inspections by authorized agents or commission. An authorized agent or the commission may inspect an on-site sewage system using aerobic treatment at any time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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30 TAC §285.7

STATUTORY AUTHORITY

This repeal is adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-site Sewage Disposal Systems. This repeal is also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. This repeal is further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract.

This repeal implements THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

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SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

30 TAC §285.13

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. The amendment is also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendment is further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

The adopted amendment implements THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

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SUBCHAPTER C. COMMISSION ADMINISTRATION OF THE OSSF PROGRAM IN AREAS WHERE NO AUTHORIZED AGENT EXISTS

30 TAC §285.21

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. The amendment is also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendment is further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

The adopted amendment implements THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.30, 285.32 - 285.34

STATUTORY AUTHORITY

These amendments are adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These adopted amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.32. Criteria for Sewage Treatment Systems.

(a) Pipe from building to treatment system.

(1) The pipe from the sewer stub out to the treatment system shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40, standard dimension ratio (SDR) 26 or other material approved by the executive director.

(2) The pipe shall be watertight.

(3) The slope of the pipe shall be no less than 1/8 inch fall per foot of pipe.

(4) The sewer stub out should be as shallow as possible to facilitate gravity flow.

(5) A two-way cleanout plug must be provided between the sewer stub out and the treatment tank. Only sanitary type fittings constructed of PVC Schedule 40 or SDR 26 shall be used on this section of the sewer. An additional cleanout plug shall be provided every 50 feet on long runs of pipe and within five feet of 90 degree bends.

(6) Additional cleanout plugs shall be of the single sanitary type.

(7) The pipe shall have a minimum inside diameter of three inches.

(b) Standard treatment systems.

(1) Septic tanks. A septic tank shall meet the following requirements.

(A) Tank volume. The liquid volume of a septic tank, measured from the bottom of the outlet, shall not be less than established in §285.91(2) of this title (relating to Tables). Additionally, the liquid depth of the tank shall not be less than 30 inches.

(B) Inlet and outlet devices. The flowline of the tank's inlet device in the first compartment of a two-compartment tank, or in the first tank in a series of tanks, shall be at least three inches higher than the flowline of the outlet device. For a configuration of the tank and inlet and outlet devices, see §285.90(6) and (7) of this title (relating to Figures). The inlet devices shall be "T" branch fittings, constructed baffles or other structures or fittings approved by the executive director. The outlet devices shall use a "T" unless an executive director approved fitting is installed on the outlet. All inlet and outlet devices shall be installed water tight to the septic tank walls and shall be a minimum of three inches in diameter.

(C) Baffles and series tanks. All septic tanks shall be divided into two or three compartments by the use of baffles or by connecting two or more tanks in a series.

(i) Baffled tanks. In a baffled tank, the baffle shall be located so that one half to two thirds of the total tank volume is located in the first compartment. Baffles shall be constructed the full width and height of the tank with a gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 25% and 50% of the liquid level. The opening may be a slot or hole. If a "T" is fitted to the slot or hole, the inlet to the fitting shall be at the depth stated in this paragraph. See §285.90(6) of this title for details. Any metal structures, fittings, or fastenings shall be stainless steel.

(ii) Series tanks. Two or more tanks shall be arranged in a series to attain the required liquid volume. The first tank in a two-tank system shall contain at least one-half the required volume. The first tank in a three-tank system shall contain at least one-third of the total required volume, but no less than 500 gallons. The first tank in a four or more tank system shall contain no less than 500 gallons, and the last tank in a four or more tank system shall contain no more than one third of the total required volume. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations.

(D) Inspection or cleanout ports. All septic tanks shall have inspection or cleanout ports located on the tank top over the inlet and outlet devices. Each inspection or cleanout port shall be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and for equipment removal. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. The risers shall extend from the tank surface to no more than six inches below the ground. The risers shall be sealed to the tank. The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports. The risers shall be fitted with removable watertight caps and prevent unauthorized access.

(E) Septic tank design and construction materials. The septic tank shall be of sturdy, water-tight construction. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent groundwater from entering the tank, and prevent wastewater from exiting the tank, except through designed inlet and outlet openings. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced precast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting deflections, leaks, or structural defects shall not be used. Sweating at construction joints is acceptable on concrete tanks.

(i) Precast concrete tanks. In addition to the general requirements in subparagraph (E) of this paragraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of American Society for Testing and Materials (ASTM) Designation: C 1227, Standard Specification for Precast Concrete Septic Tanks (2000) or under any other standards approved by the executive director. A professional engineer shall verify in writing that the manufacturer is in compliance with ASTM Standard C 1227. This verification shall be submitted to the permitting authority from the tank manufacturer. If this verification has not been previously submitted or accepted by the permitting authority, a new verification shall be completed within 30 days of the effective date of this section.

(ii) Fiberglass and plastic polyethylene tank specifications.

(I) The tank shall be fabricated to perform its intended function when installed. The tank shall not be adversely affected by normal vibration, shock, climate conditions, nor typical household chemicals. The tank shall be free of rough or sharp edges that would interfere with installation or service of the tank.

(II) Full or empty tanks shall not collapse or rupture when subjected to earth and hydrostatic pressures.

(iii) Poured-in-place concrete tanks. Concrete tanks shall be structurally sound and water-tight. The concrete tank shall be designed by a professional engineer.

(iv) Tank manufacturer specifications. All precast or prefabricated tanks shall be clearly and permanently marked, tagged, or stamped with the manufacturer's name, address, and tank capacity. The identification shall be near the level of the outlet and be clearly visible. Additionally, the direction of flow into and out of the tank shall be indicated by arrows or other identification, and shall be clearly marked at the inlet and outlet.

(F) Installation of tanks. For gravity disposal systems, septic tanks must be installed with at least a 12 inch drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel, free of rock larger than 1/2 inch in diameter, shall be placed under and around all tanks, except poured-in-place concrete tanks. Unless otherwise approved by the permitting authority, tank excavations shall be left open until they have been inspected by the permitting authority. Tank excavations must be backfilled with soil or pea gravel that is free of rock larger than 1/2 inch in diameter. Class IV soils and gravel larger than one-half inch in diameter are not acceptable for use as backfill material. If the top of a septic tank extends above the ground surface, soil may be mounded over the tank to maintain slope to the drainfield.

(G) Pretreatment (Trash) tanks. If an aerobic treatment unit does not prevent plastic and other non-digestible sewage from interfering with aeration lines and diffusers, the executive director may require the use of a pretreatment tank. All pretreatment tanks shall meet all applicable structural and fitting requirements of this section.

(H) Leak Testing. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the tank riser(s) may be required.

(2) Intermittent sand filters. A typical layout and cross-section of an intermittent sand filter is presented in §285.90(8) of this title. Requirements for intermittent sand filters are as follows.

(A) Sand media specifications. Sand filter media must meet ASTM C-33 specifications as outlined in §285.91(11) of this title.

(B) Loading rate. The loading rate shall not exceed 1.2 gallons per day per square foot.

(C) Surface area. The minimum surface area shall be calculated using the formula: Q/1.2=Surface Area (Square Feet), where Q is the wastewater flow in gallons per day.

(D) Thickness of sand media. There shall be a minimum of 24 inches of sand media.

(E) Filter bed containment. The filter bed containment shall be an impervious lined pit or tank. Liners shall meet the specifications detailed in §285.33(b)(2)(A) of this title (relating to Criteria for Effluent Disposal Systems).

(F) Underdrains. For gravity discharge of effluent to a drainfield, there shall be a three inch layer of pea gravel over a six inch layer of 0.75 inch gravel, that contains the underdrain collection pipe. When pumpwells are to be used to pump the effluent from the underdrain to the drainfield, they must be constructed of concrete or plastic sewer pipe. The pumpwell must contain a sufficient number of holes so that effluent can flow from the gravel void space as rapidly as the effluent is pumped out of the pumpwell to the drainfield. Refer to §285.90(9) of this title.

(c) Proprietary treatment systems. This subsection does not apply to proprietary septic tanks described in subsection (b)(1) of this section.

(1) Tank sizing. Proprietary treatment systems must be designed using Table II, located in Figure: 30 TAC §285.91(2) of this title (relating to Septic Tank and Aerobic Treatment Unit Sizing). Leak testing shall be performed in accordance with §285.32(b)(1)(H) of this title (relating to Leak Testing).

(2) Installation. Proprietary treatment systems shall be installed according to this subchapter. If the manufacturer has installation specifications that are more stringent than given in this subchapter, the manufacturer shall submit these specifications to the executive director for review. If approved by the executive director, the treatment systems may be installed according to these more stringent specifications. Any subsequent changes to these manufacturer's installation specifications must be approved by the executive director before installation. Inspection, cleanout ports, or maintenance ports shall have risers installed according to the riser installation provisions in subsection (b)(1)(D) of this section. Tank excavations shall be backfilled according to the backfill provisions in subsection (b)(1)(F) of this section. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(3) System maintenance. Ongoing maintenance contracts are required for all proprietary treatment systems except those systems maintained by homeowners under the provisions of §285.7(d)(4) of this title (relating to Maintenance Requirements). The maintenance contract shall satisfy §285.7(d) of this title.

(4) Electrical wiring. Electrical wiring for proprietary systems shall be according to §285.34(c) of this title (relating to Other Requirements).

(5) Approval of proprietary treatment systems. Proprietary treatment systems must be approved by the executive director prior to their installation and use. Approval of proprietary treatment systems shall follow the procedures found in this section. After the effective date of these rules, only systems tested according to subparagraph (A) or (B) of this paragraph will be placed on the list of approved systems. The list may be obtained from the executive director. All systems on the list of approved systems on the effective date of these rules shall continue to be listed subject to the retesting requirements in paragraph (6) of this subsection. In addition, all proprietary treatment systems undergoing testing under this paragraph on the effective date of these rules shall be considered for inclusion on the list of approved systems.

(A) Treatment systems that have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (2005), or have been tested and certified as Class I systems according to NSF Standard 40 (2005), by an American National Standard Institute (ANSI) accredited testing institution, or under any other standards approved by the executive director, shall be considered for approval by the executive director. All systems approved by the executive director on the effective date of these rules shall continue to be listed on the list of approved systems, subject to retesting under the requirements of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director. The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director.

(i) Proprietary units under this section have been approved to treat flows equal to or less than their rated capacity and with an influent wastewater strength ranging from a 30-day average Carbonaceous Biochemical Oxygen Demand (CBOD) concentration between 100 milligrams per liter (mg/l) and 300 mg/l and a 30-day average TSS concentration between 100 mg/l and 350 mg/l.

(ii) Proprietary units may be used as components in an overall treatment system treating influent stronger than the ranges listed in this section. However, the overall treatment system will be considered a non-standard treatment system and shall meet the requirements set forth in subsection (d) of this section.

(B) Treatment systems that will not be accepted for testing because of system size or type by NSF International, or ANSI accredited third party testing institutions, and are not approved systems at the time of the effective date of these rules, may only be approved in the following manner.

(i) The proprietary systems shall be tested by an independent third party for two years and all the supporting data from the test shall be submitted to the executive director for review and approval, or denial before the system is marketed for sale in the state.

(ii) The independent third party shall obtain a temporary authorization from the executive director before testing. The temporary authorization shall contain the following:

(I) the number of systems to be tested (between 20 and 50);

(II) the location of the test sites (the test sites must be typical of the sites where the system will be used if final authorization is granted);

(III) provisions as to how the proprietary system will be installed and maintained;

(IV) the testing protocol for collecting and analyzing samples from the system;

(V) the equipment monitoring procedures, if applicable; and

(VI) provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(iii) Permitting authorities may issue authorizations to construct upon receipt of the temporary authorization. The owner

must be advised, in writing, that the system is temporarily approved for testing. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense. A system installed under this subparagraph is the responsibility of the manufacturer until the system has obtained final authorization by the executive director according to this subparagraph.

(iv) Upon completion of the two-year test period, the executive director shall require the independent third party to submit a detailed report on the performance of the system. After evaluating the report, the executive director may issue conditional approval of the system, or may deny use of the system.

(I) The conditional approval will authorize installations only in areas similar to the area in which the system was tested.

(II) The conditional approval shall be for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored according to a plan approved by the executive director. Approval or disapproval of these systems will be based on their performance during the monitoring period. Failure of one or more of the installed systems may be cause for disapproval of the proprietary system. The owner must be advised, in writing, that the system is conditionally approved.

(III) If the executive director denies use of the system after the two-year period, the executive director shall provide, in writing, the reasons for denying the use of the system. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense.

(v) Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director, the notice of approval may be made permanent for the test systems and the systems will be deemed suitable for use in conditions similar to areas in which the systems were tested and monitored.

(6) System reviews. The manufacturers of systems that are approved for listing under this section shall ensure that their systems are reviewed every seven years, or as often as deemed necessary by the executive director, starting from the date the system was originally added to the executive director's approved list. All reviews shall be completed before the end of the seven-year period. The manufacturer of any system that was approved by the executive director more than seven years before the effective date of these rules, will be given 365 days from the effective date of these rules to complete a review.

(A) The review shall be performed by either an ANSI accredited institution according to the reevaluation requirements in NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997), or under any standards approved by the executive director, or by an independent third party for those systems not tested under NSF Standard 40.

(B) If the system being reviewed was not approved under the requirements of NSF Standard 40, the independent third party shall evaluate between 20 and 50 systems in the state that have been in operation for at least two years and are the same design as originally approved.

(C) The review under this subsection shall include an evaluation of:

(i) the short-term and long-term effectiveness of the system;

(ii) the structural integrity of the system;

(iii) the maintenance of the system;

(iv) owner access to maintenance support;

(v) any impacts that system failures may have had on the environment; and

(vi) an evaluation of the effectiveness of the manufacturer's installer training program.

(D) Any system that is not approved by the executive director as a result of the review will be removed from the list of approved systems. The manufacturer shall ensure that maintenance support remains available for the existing systems.

(d) Non-standard treatment systems. All OSSFs not described or defined in subsections (b) and (c) of this section are non-standard treatment systems. These systems shall be designed by a professional engineer or a professional sanitarian, and the planning materials shall be submitted to the permitting authority for review according to §285.5(b)(2) of this title (relating to Submittal Requirements for Planning Materials). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority.

(1) Non-standard treatment systems include all forms of the activated sludge process, rotating biological contactors, recirculating sand filters, trickling type filters, submerged rock biological filters, and sand filters not described in subsection (b)(2) of this section.

(2) The planning materials for non-standard treatment systems submitted for review will be evaluated using the criteria established in this chapter, or basic engineering and scientific principles.

(3) Approval for a non-standard treatment system is limited to the specific system described in the planning materials. Approval is on a case-by-case basis only.

(4) The need for ongoing maintenance contracts shall be determined by the permitting authority based on the review required by §285.5(b) of this title. If the permitting authority determines that a maintenance contract is required, the contract must meet the requirements in §285.7 of this title.

(5) Electrical wiring for non-standard treatment systems shall be installed according to §285.34(c)(4) of this title.

(e) Effluent quality. The following effluent criteria shall be met by the treatment systems for those disposal systems listed in §285.33 of this title that require secondary treatment.
Figure: 30 TAC §285.32(e) (No change.)

(f) Other Design Considerations.

(1) Restaurant/food establishment sewage. When designing for restaurants, food service establishments, or similar activities, the minimum design strength value shall be 1,200 mg/l Biochemical Oxygen Demand (BOD) after a properly sized grease trap/interceptor. It is the responsibility of the designer to properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required.

(2) Other high-strength sewage. For situations where sewage as defined in this chapter is expected to be a higher strength than residential sewage, it is the responsibility of the professional designer to justify sewage design strength estimations and properly design a system that reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 mg/l BOD.

(3) Flow equalization. The designer should consider whether flow-equalization will be needed for the treatment system to function properly.

§285.34. Other Requirements.

(a) Septic tank effluent filters. Effective 180 days after the effective date of these rules, all effluent filters that are installed in septic tanks shall be listed and approved under the NSF Standard 46 (2000) or under any standard approved by the executive director.

(b) Pump tanks. Pump tanks may be necessary when the septic tank outlet is at a lower elevation than the disposal field or for systems that require pressure disposal. All requirements in §285.32(b)(1)(D) - (F) of this title (relating to Criteria for Sewage Treatment Systems) also apply to pump tanks. The pump tank shall be constructed according to the following specifications.

(1) Pump tank criteria. When effluent must be pumped to a disposal area, an appropriate pump shall be placed in a separate water-tight tank or chamber. A check valve may be required if the disposal area is above the pump tank. The pump tank shall be equipped to prevent siphoning. The tank shall be provided with an audible and visible high water alarm. If an electrical alarm is used, the power circuit for the alarm shall be separate from the power circuit for the pump. Batteries may be used for back-up power supply only. All electrical components shall be listed and labeled by Underwriters Laboratories (UL). At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(2) Pump tank sizing. Pump tanks shall be sized to contain one-third of a day's flow between the alarm-on level and the inlet to the pump tank. The capacity above the alarm-on level may be reduced to four hours average daily flow if the pump tank is equipped with multiple pumps. See §285.33(d)(2)(G)(iii) of this title (relating to Criteria for Effluent Disposal Systems) for sizing of pump tanks for surface application systems.

(3) Pump specifications. A single pump may be used for flows equal to or less than 1,000 gallons per day. Dual pumps are required for flows greater than 1,000 gallons per day. A dual pump system shall have the "alarm on" level below the "second pump on" level, and shall have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. All audible and visible alarms shall have a manual "silence" switch. The pump switch-gear shall be set such that each pump operates as the first pump on an alternating basis. All pumps shall be rated by the manufacturer for pumping sewage or sewage effluent.

(c) Electrical wiring. All electrical wiring shall conform to the requirements the National Electric Code (1999) or under any other standards approved by the executive director. Additionally, all external wiring shall be installed in approved, rigid, non-metallic gray code electrical conduit. The conduit shall be buried according to the requirements in the National Electrical Code and terminated at a main circuit breaker panel or sub-panel. Connections shall be in approved junction boxes. All electrical components shall have an electrical disconnect within direct vision from the place where the electrical device is being serviced. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

(d) Grease interceptors. Grease interceptors shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of greases and oils to the OSSF. Grease interceptors shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be properly sized and installed according to the requirements of the 2000 edition of the Uniform Plumbing Code, the 1980 EPA Design Manual: Onsite Wastewater Treatment and Disposal Systems, or other prevailing code.

(e) Holding tanks. Tanks shall be constructed according to the requirements established for septic tanks under §285.32(b)(1)(D) - (E) of this title. Inlet fittings are required. No outlet fitting shall be provided. A baffle is not required. Holding tanks shall be used only on sites where other methods of sewage disposal are not feasible (these holding tank provisions do not apply to portable toilets or to an office trailer at a construction site). All holding tanks shall be equipped with an audible and visible alarm to indicate when the tank has been filled to within 75% of its rated capacity. A port with its smallest dimension being at least 12 inches shall be provided in the tank lid for inspection, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(1) Minimum capacity. The minimum capacity of the holding tank shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (wastewater usage rate in gallons per day x seven days).

(2) Location. Holding tanks shall be installed in an area readily accessible to a pump truck under all weather conditions, and at a location that meets the minimum distance requirements in §285.91(10) of this title (relating to Tables).

(3) Pumping requirements. A scheduled pumping contract with a waste transporter, holding a current registration with the executive director, must be provided to the permitting authority before a holding tank may be installed. Pumping records must be retained for five years.

(f) Composting toilets. Composting toilets will be approved by the executive director provided the system has been tested and certified under NSF International Standard 41 (1999) or under any other standards approved by the executive director.

(g) Condensation. If condensate lines are plumbed directly into an OSSF, the increased water volume must be accounted for (added to the usage rate) in the system planning materials.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS,

MAINTENANCE PROVIDERS, AND MAINTENANCE TECHNICIANS

30 TAC §§285.50, 285.60 - 285.65

STATUTORY AUTHORITY

These amendments are adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These adopted amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.64. Duties and Responsibilities of Maintenance Providers and Maintenance Technicians.

(a) A maintenance provider shall:

(1) possess a current license from the executive director;

(2) ensure maintenance of accurate records of fees, inspections, and reports;

(3) satisfy the requirements of the maintenance contract between the homeowner of the OSSF system and the maintenance provider according to §285.7 of this title (relating to Maintenance Requirements);

(4) maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(5) perform maintenance on each OSSF system under executed contract, keep a maintenance record, and submit maintenance reports to the permitting authority and the owner of the OSSF for whom the installer has contracted to provide maintenance, according to §285.7 of this title.

(b) A maintenance technician shall:

(1) possess a current registration from the executive director;

(2) represent his supervising maintenance provider while performing maintenance on an OSSF;

(3) perform services associated with OSSF maintenance under the direct supervision and direction of the maintenance provider on-site or be in direct communication with the maintenance provider;

(4) not receive compensation for OSSF maintenance from anyone except the supervising maintenance provider;

(5) maintain a current address and phone number with the executive director and submit any change in address or phone number to the executive director in writing within 30 days after the date of the change; and

(6) not advertise or otherwise portray themselves as a maintenance provider.

§285.65. Suspension or Revocation of License or Registration.

(a) Suspension. In addition to the grounds listed in Texas Water Code, §7.303, the commission may suspend an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, a maintenance provider's license, or a maintenance technician's registration for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for suspension of these licenses and registrations include (and are not limited to) the following reasons.

(1) A maintenance provider's license can be suspended for:

(A) failing to perform required maintenance on an OSSF for at least eight consecutive months (the failure to maintain records is evidence of failure to perform maintenance on the OSSF);

(B) failing to properly submit maintenance reports required by §285.7(d) of this title (relating to Maintenance Requirements) for an individual OSSF in a 12-month period; or

(C) failing to properly submit four or more required OSSF maintenance reports over any two-year period.

(2) A designated representative's license can be suspended for:

(A) failing to verify, before the initial inspection for a particular OSSF, that the individual installing the OSSF is a properly licensed installer;

(B) failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs); or

(C) failing to enforce the requirements of an order, ordinance, or resolution of an authorized agent.

(b) Revocation. In addition to the grounds listed in Texas Water Code, §7.303 the commission may revoke an OSSF installer's license, a designated representative's license, a site evaluator's license, an apprentice's registration, a maintenance provider's license, or a maintenance technician's registration for violation of duties and responsibilities listed in this subchapter, as recommended by the executive director. Additional grounds for revocation of these licenses and registrations include (and are not limited to) the following reasons.

(1) An OSSF installer's license can be revoked for:

(A) constructing, or otherwise facilitating the construction of, an OSSF that is not in compliance with this chapter; or

(B) allowing, or beginning, the construction of an OSSF without a permit when a permit is required.

(2) A designated representative's license can be revoked for:

(A) approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution or the notice of approval;

(B) practicing as an apprentice, maintenance provider, maintenance technician, site evaluator or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(C) working for a maintenance provider or maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent.

(3) A site evaluator's license can be revoked for failing to maintain a current professional engineer license, professional sanitar-

ian license, professional geoscientist license, or a certified professional soil scientist certificate.

(4) An apprentice's registration can be revoked for:

(A) acting as, advertising, or performing duties and responsibilities of an installer without the direct supervision of, or direct communication with, the supervising installer; or

(B) receiving compensation for an OSSF installation from someone other than the supervising installer.

(5) A maintenance provider's license or maintenance company's registration can be revoked for:

(A) failing to perform required maintenance on an aerobic OSSF in a 12-month period; or

(B) failing to properly submit maintenance reports required by §285.7(d) of this title for an individual homeowner in any consecutive 12-month period.

(6) A maintenance technician's registration can be revoked for:

(A) acting as, advertising, or otherwise portraying themselves as a maintenance provider, or performing duties and responsibilities of a maintenance provider without the direct supervision of, or direct communication with, the supervising maintenance provider; or

(B) receiving compensation for OSSF maintenance from someone other than the supervising maintenance provider.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. OSSF ENFORCEMENT

30 TAC §285.70, §285.71

STATUTORY AUTHORITY

These amendments are adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These adopted amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

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SUBCHAPTER I. APPENDICES

30 TAC §285.90, §285.91

STATUTORY AUTHORITY

These amendments are adopted under Texas Health and Safety Code (THSC), §§366.001 - 366.078, concerning On-Site Sewage Disposal Systems. These amendments are also adopted under the general authority granted in Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; TWC, §5.103, concerning Rules; TWC, §5.105, concerning General Policy; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC. The amendments are further adopted under the authority granted to the commission by the Texas Legislature in TWC, §§37.001 - 37.015, concerning Occupational Licenses and Registrations.

These adopted amendments implement THSC, §§366.001 - 366.078; TWC, §§5.013, 5.102, 5.103, 5.105, 7.002, and 37.001 - 37.015.

§285.90. Figures.

The following figures are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Figure 1. Maximum Application Rates for Surface Application of Treated Effluent in Texas.
Figure: 30 TAC §285.90(1) (No change.)

(2) Figure 2. Model Affidavit to the Public.
Figure: 30 TAC §285.90(2)

(3) Figure 3. Sample Testing and Reporting Record.
Figure: 30 TAC §285.90(3)

(4) Figure 4. Typical Drainfields - Sectional View.
Figure: 30 TAC §285.90(4) (No change.)

(5) Figure 5. Typical Drainfields.
Figure: 30 TAC §285.90(5) (No change.)

(6) Figure 6. Two Compartment Septic Tank.
Figure: 30 TAC §285.90(6) (No change.)

(7) Figure 7. Two Septic Tanks in Series.
Figure: 30 TAC §285.90(7) (No change.)

(8) Figure 8. Intermittent Sand Filters.
Figure: 30 TAC §285.90(8) (No change.)

(9) Figure 9. Intermittent Sand Filter Underdrain and Pumpwell.
Figure: 30 TAC §285.90(9) (No change.)

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.
Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.
Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: 30 TAC §285.91(8) (No change.)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER C. CLAIMS PROCESSING--TRAVEL VOUCHERS

34 TAC §5.22

The Comptroller of Public Accounts adopts the repeal of §5.22, concerning incorporation by reference: "State of Texas Travel Allowance Guide," without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5242).

The existing §5.22 is being repealed so that the content can be updated in a new §5.22 to simplify administration and allow for the implementation of electronic tools that support travel expense reimbursement for state agencies, employees, and other persons. The travel guide has been incorporated by reference as a rule under §5.22 and therefore the guide could not be updated without amending the rule. Much of the travel guide consists of guidelines, examples, illustrations, general discussions, restatements of provisions of Government Code, Chapter 660, and the General Appropriations Act. Because they have been incorporated by reference, any change to the guidelines, examples, or illustrations that may be useful, require the agency to initiate a formal rulemaking process to incorporate the change. The new rule would allow the comptroller to update or add to examples and guidelines without having to formally amend the rule every time updates are needed. These updates ensure that the most current examples and information available to assist agencies with travel expense reimbursement are provided.

No comments were received regarding adoption of the amendment.

The repeal is adopted under Government Code, §660.021, which provides the comptroller with the authority to adopt rules for the effective and efficient administration of the travel provisions of the Government Code and the General Appropriations Act.

The repeal implements Government Code, §660.021 and §660.043.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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34 TAC §5.22

The Comptroller of Public Accounts adopts new §5.22, relating to State of Texas travel guidance, without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5242).

The new section replaces the existing §5.22, which is being repealed to simplify administration and allow for the efficient updating of guidelines, examples, illustrations, and to allow for the implementation of electronic tools that support travel expense reimbursement for state agencies, employees and other persons. The travel guide has been incorporated by reference as a rule under §5.22 and therefore the guide could not be updated without amending the rule. Much of the travel guide consists of guidelines, examples, illustrations, general discussions, and restatements of provisions of Government Code, Chapter 660, and the General Appropriations Act. Because they have been incorporated by reference, any change to the guidelines or examples that may be useful require the agency to initiate a formal rulemaking process to incorporate the change. The rule would allow the comptroller to update or add to examples and guidelines without having to formally amend the rule every time updates are needed. These updates ensure that the most current examples and information available to assist agencies with travel expense reimbursement are provided.

New §5.22 allows an additional method for determining reimbursable mileage. Under Government Code, §660.043, the number of miles traveled by an employee for state business may be determined by the Texas Mileage Guide or by a point-to-point itemization of miles traveled. While tracking the odometer is a reliable method for calculating miles for reimbursement purposes in most circumstances, new technology makes the calculation simpler and faster. The advent of readily available electronic nationwide mapping services, such as Yahoo maps, Google maps, MapQuest, satellite-based navigation systems, etc., allows individuals to enter starting points and ending points. Based on these inputs, the electronic mapping tools quickly and reliably calculate total mileage providing an alternative to tracking the vehicle's odometer readings. New §5.22 would allow an employee the choice of documenting point-to-point mileage using either the vehicle's odometer reading or by utilizing a readily available electronic mapping service to be selected by each agency.

No comments were received regarding adoption of the amendment.

The new section is adopted under Government Code, §660.021, which authorizes the comptroller to adopt rules for the effective and efficient administration of the travel provisions of the Government Code and the General Appropriations Act.

The new section implements Government Code, §660.021 and §660.043.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.200

The Comptroller of Public Accounts adopts amendments to §5.200, concerning state property accounting system, without changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5244). The amendments are to improve the accuracy and efficiency of the state property accounting system by updating the definition of capital asset; shortening the timeframe that must elapse before an agency may delete missing property from the state property accounting system; and deleting reference to obsolete provisions regarding reassignable personal property and certain transition provisions which are no longer necessary. The amendments also conform §5.200 to legislative changes made to the state property accounting statutes (Government Code, Chapter 403, Subchapter L) and to related provisions in the surplus and salvage property statutes (Government Code, Chapter 2175). House Bill 2914, 77th Legislature, 2001, amended Government Code, §§403.273, 403.274 and 403.276, regarding documenting the lending of agency property to another agency; the timing of physical inventories; the change of an agency head or property manager; and the reporting of lost, destroyed or damaged property to the appropriate agencies. The amendments also reflect amendments to Government Code, Chapter 2175, as they relate to an exception from the surplus/salvage property statutes relating to recyclable materials (Government Code, §2175.303(2)); institutions or agencies or higher education (Government Code, §2175.304); as well as amendments to Chapter 2175 adding exceptions from the surplus/salvage property statutes as they pertain to surplus computer equipment for the Secretary of State (Government Code, §2175.305), the Office of Court Administration (Government Code, §2175.307), and certain agencies involved in the areas of health, human services, or education (Government Code, §2175.306).

The amendment also updates the names of certain state agencies whose names have been changed since the rule was last amended.

No comments were received regarding adoption of the amendment.

The amendments is adopted under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system.

The amendment implements Government Code, §§403.271 - 403.278.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (Commission) adopts the following new sections, with changes, to Chapter 809, relating to Child Care Services, as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3909):

Subchapter C. Eligibility for Child Care Services, §809.50 and §809.51

The Commission adopts amendments, without changes, to the following sections of Chapter 809, relating to Child Care Services, as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3909):

Subchapter B. General Management, §809.19

Subchapter C. Eligibility for Child Care Services, §809.43, §809.44, §809.46, and §809.48

Subchapter D. Parent Rights and Responsibilities, §809.74 and §809.75

The Commission adopts amendments, with changes, to the following section of Chapter 809, relating to Child Care Services, as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3909):

Subchapter B. General Management, §809.13 and §809.20

The Commission adopts the repeal of the following sections of Chapter 809, relating to Child Care Services, as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3909):

Subchapter C. Eligibility for Child Care Services, §§809.50-809.52

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts amendments to the Child Care Services rules, Chapter 809, to address:

-a legislatively mandated increase in reimbursement rates for child care providers that obtain Texas School Ready!™ certification (TSRC) or meet the Texas Rising Star Provider criteria;

-child care for a parent's extended temporary medical incapacitation or temporary cessation of work, education, or training; and

-continued eligibility for wraparound child care-i.e., care provided before and after a child care program's designated hours-for children who are receiving Commission-funded child care and are enrolled in Head Start, public prekindergarten (pre-K), or a school-readiness integration program.

The Commission also makes several technical corrections and clarifications to Chapter 809 by:

-changing incorrect citations;

-using common phrases and language throughout the rules; and

-providing clarifying language that aligns the rules with Commission intent and current practice.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts the following amendments to Subchapter B:

§809.13. Board Policies for Child Care Services

Section 809.13, relating to Local Workforce Development Board (Board) policies for child care services, requires Boards to:

-conduct fraud fact-finding; and

-establish policies regarding personal responsibility agreement (PRA) sanctions.

Section 809.13(d)(7) changes the reference from §§809.48, 809.50, and 809.51 to §809.48 and §809.50 resulting from the repeal of §§809.50-809.52 and the adoption of new §809.50.

Section 809.13(d)(11) changes the reference from §809.71(b)(2) to §809.71(3) to reflect the correct provision for transferring a child from one provider to another.

Section 809.13(d)(13) changes the reference from §809.92(b)(3) to §809.92(b)(4) to reflect the correct provision for attendance standards and procedures.

Section 809.13(d)(15) is amended to clarify that Boards are required to develop procedures for fraud fact-finding-not to investigate fraud-by replacing the term "investigating" with the term "fact-finding" to reflect the language used in §809.111. This change also aligns with current practices and principles from the January 2007 rule amendment, which states that it is the Commission's responsibility-not the Boards' responsibility-to determine if a person has committed fraud, and it is the Boards' role to research facts, not to investigate whether fraud has occurred. This policy is contained in WD Letter 59-06, Change 1, issued February 2, 2007, and entitled "Requirements for Reporting, Fact-Finding, and Prosecution of Fraud, Waste, Theft, and Program Abuse Cases, and Collection of Overpayments: *Update*."

New §809.13(d)(16) requires Boards to establish policies regarding sanctions imposed when a parent fails to comply with the provisions of the PRA as referenced in §809.76(c). Because a Board has the flexibility to terminate child care when a parent fails to comply with the provisions of the PRA, this sanction policy could affect the provision of workforce services and, therefore, as required by Commission rule §801.51(f) and as detailed in WD Letter 10-07, issued February 2, 2007, and entitled "Adoption of Local Workforce Development Board Policies in Open Meetings," Board members must adopt such policies in an open meeting.

Comment: One individual commented on the proposed new §809.13(d)(17) requiring Boards to establish a policy concerning continued child care for children enrolled in Head Start, Early Head Start, or a public pre-K program as provided in §809.50(g). The commenter agreed that Boards should have flexibility to develop a policy on continued child care for children enrolled in Head Start, Early Head Start, or a public pre-K program.

The commenter stated this was due to the limited resources and extended need for subsidized child care services in the commenter's area.

Response: The Commission appreciates the comment, but has modified the rule language in §809.50(g), thus making the proposed additional policy requirement unnecessary. Therefore, proposed §809.13(d)(17) is not included in the adopted rules. The modified rule language in §809.50(g) is simplified to allow Boards to establish higher income eligibility for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of the state median income (SMI) for a family of the same size. However, even with this modification, Boards are still required to have a policy on whether they will have a higher income limit as set forth in §809.13(5) related to Boards' authority to establish income limits.

§809.19. Assessing the Parent Share of Cost

Section 809.19(a)(2)(C) relating to parent share of cost for children receiving and formerly receiving protective services child care pursuant to §809.49 and §809.54(c)(1) is amended to clarify that a parent's exemption from the parent share of cost is applicable when a child's eligibility for child care is determined by the Texas Department of Family and Protective Services (DFPS) for a child currently or formerly receiving protective services. The exemption from the parent share of cost applies to children receiving DFPS protective services as well as children formerly receiving protective services for whom DFPS has determined that child care is integral to that service need as provided by §809.54(c)(1). The prior rule language did not specify that a parent of a child who formerly received protective services is exempt, but it is current practice and the intent of the Commission.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b) replaces the term "graduated" reimbursement rates with the term "enhanced" reimbursement rates to describe the minimum 5% increase in rates for certain providers. Enhanced rates may also be graduated, but this is not a requirement. Use of the term enhanced aligns with language used in Article IX, §19.111 of the General Appropriations Act, 80th Texas Legislature, Regular Session (2007), which requires the enhancement of reimbursement rates for child care providers that obtain certification under the TSRC system or meet Texas Rising Star Provider criteria.

New §809.20(b)(3) requires Boards to establish enhanced reimbursement rates for child care providers that obtain certification under the TSRC system. This new paragraph implements the direction of the Texas Legislature as provided in Article IX, §19.111 of the General Appropriations Act, 80th Texas Legislature, Regular Session (2007).

The Commission emphasizes that although Boards must establish enhanced reimbursement rates for infants, toddlers, and preschool children attending a certified Texas School Ready!™ facility, Boards have the flexibility to establish enhanced reimbursement rates for school-age children enrolled in such facilities.

However, an enhanced reimbursement rate must be applied to all age groups and classrooms for Texas Rising Star Providers and child care providers participating in a Texas Early Education Model (TEEM) school readiness integration project developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center). School-age children or other TWC-subsidized children in the TEEM facility are not excluded from the enhanced reimbursement rates.

Comment: One commenter suggested that basic child care reimbursement rates be established on at least the 50th percentile of the current market rate study, and the enhanced rates be established at 125% of the basic rate using a graduated scale based on TRS stars. The commenter noted the current rates limit parent choice since higher-priced providers do not participate or limit participation with child care services.

Response: The Commission appreciates the comment. However, the actual amount or percentage of the reimbursement rates is not subject to this rulemaking-thus, the Commission cannot address this issue.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission adopts the following amendments to Subchapter C:

§809.43. Priority for Child Care Services

Section 809.43(a)(2)(B) clarifies that a child is included in the second priority group if the parent is a qualified veteran "or qualified spouse." The phrase "or qualified spouse" is added to align with the definition in §801.23 of the Commission's Local Workforce Development Boards rules.

§809.44. Calculating Family Income

Section 809.44 clarifies that income sources listed are used for determining both eligibility and parent share of cost. The section also states that family income does not include any income sources specifically excluded by federal law or regulation.

Section 809.44(a) adds the phrase "and the parent share of cost" to make the list of income items also applicable to determining parent share of cost. This change aligns with Boards' longstanding practice of using the income inclusions and exclusions both for determining eligibility and for determining parent share of cost.

New §809.44(b)(11) adds a comprehensive exclusion to cover any income sources specifically excluded by federal law or regulation. Allowing a comprehensive exclusion for family income sources that are specifically excluded by federal law or regulation forgoes the need for a Commission rule change any time federal legislation or regulation is amended to exclude a specific income source from being counted toward eligibility for a federally funded program.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46(c) changes the reference from §§809.50-809.52 to §809.50 resulting from the repeal of §§809.50-809.52 and the adoption of new §809.50.

Section 809.46(e) changes the reference from §§809.50-809.52 to §809.50 resulting from the repeal of §§809.50-809.52 and the adoption of new §809.50.

§809.48. Transitional Child Care

Section 809.48 is amended to incorporate into Transitional child care the reduction of work and education requirements allowed for At-Risk child care. Section 809.48 also aligns Transitional child care with At-Risk child care by including the provisions related to counting secondary credit hours.

Section 809.48(b) replaces the phrase "children in families at risk of becoming dependent on public assistance" with "At-Risk child care" as set forth in new §809.50.

New §809.48(f) allows a Board to reduce the work, education, and job training activity requirements if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

New §809.48(g) specifies the education credit-hour equivalences for meeting the required education activity hours per week, specifically:

-§809.48(g)(1) states that each credit hour of postsecondary education counts as three hours of education activity per week; and

-§809.48(g)(2) states that each credit hour of a condensed postsecondary education course counts as six hours of education activity per week.

Comment: One commenter requested guidance for determining the amount and criteria by which the work, education, and job training activity requirements can be reduced.

Response: The provision allowing Boards the flexibility to reduce the work, education, and job training activity requirements for parents with a medical disability or who need to care for a disabled family member is currently in rule for children living at low incomes. The rule amendment extends this allowance to Transitional child care with the creation of new §809.50, At-Risk Child Care. Boards have the flexibility to establish the documentation criteria necessary to determine the appropriate reduction in hours. Medical documentation of the disability may assist Boards in determining the appropriate participation requirements on a case-by-case basis; however, because child care services are for parents who require care in order to work or attend a job training or educational program, the activity requirement hours cannot be reduced to zero.

§809.50. Child Care for Children Living at Low Incomes

Section 809.50 is repealed and the common provisions of §§809.50-809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.51. Child Care for Children with Disabilities

Section 809.51 is repealed and the common provisions of §§809.50-809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.52. Child Care for Children of Teen Parents

Section 809.52 is repealed and the common provisions of §§809.50-809.52 are consolidated into new §809.50, At-Risk Child Care.

§809.50. At-Risk Child Care

New §809.50 consolidates and streamlines the rule language contained in repealed §§809.50-809.52 by combining similar provisions into one section rather than three separate sections.

New §809.50(a) establishes the eligibility requirements for At-Risk child care. Section 809.50(a)(1) sets income limits-as established by the Board, and §809.50(a)(2) sets forth the work, education, and job training requirements for a parent to be determined eligible for child care. These requirements are unchanged from repealed §809.50(a) and §809.51(a).

New §809.50(b) allows Boards to reduce the work, education, and job training activity requirements if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week. These requirements are unchanged from repealed §809.50(b) and §809.51(b).

New §809.50(c)(1)-(2) specifies the education credit hour equivalences for meeting the required education activity hours per week. These requirements are unchanged from repealed §809.50(c) and §809.51(c). Section 809.50(c)(3) states that teen parents attending high school or the equivalent shall be considered as meeting the education requirements. This incorporates the requirement of repealed §809.52(a)(1).

New §809.50(d) states that when calculating income eligibility for a child with disabilities, a Board must deduct the cost of the child's ongoing medical expenses from the family income. This incorporates the requirements of repealed §809.51(a)(1).

New §809.50(e) allows Boards to establish a higher income eligibility limit for teen parents than those specified in §809.41(a)(2)(A). This incorporates the requirements of repealed §809.52(a)(2).

New §809.50(f) states that a teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8). This is unchanged from repealed §809.52(b).

New §809.50(g) addresses eligibility for wraparound child care-i.e., child care provided before and after an education program-for children who are receiving Commission-funded child care and are enrolled in Head Start, public pre-K, or a school-readiness integration program.

Section 809.50(g) states that Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

Allowing Boards to establish higher income limits for families with a child enrolled in Head Start, Early Head Start, or public pre-K assists in the availability of full-day child care pursuant to §809.14(b). The continuation of child care under these provisions is allowed on the basis of the child meeting the federal requirements described in §809.42(c)(2) as long as the parent is able to meet all other Board eligibility requirements. With the federal requirements establishing the eligibility income limit at 85% of SMI, this rule only affects Boards with income limits set below 85% of SMI.

Regarding wraparound child care for children receiving Commission-funded child care and who are enrolled in Head Start, Early Head Start, or public pre-K, the Texas Legislature-as provided in Texas Human Resources Code §72.003, Texas Government Code §2308.3165, and Texas Education Code, Chapter 29-has placed increased emphasis on local coordination among early childhood education programs in order to support integration across these programs. The continued provision of child care services assists in the extension of early childhood education program hours to full day and full year.

However, the varying eligibility periods among Commission-funded child care services, Head Start, and public pre-K have been identified as barriers that may prevent a child in Commission-funded child care from completing a Head Start or public pre-K program during the school year. Head Start

and public pre-K eligibility are determined prior to the school or program year. Children are deemed eligible to remain in these programs regardless of changes in a family's work or income status. However, children in Commission-funded child care who are receiving wraparound care while enrolled in a Head Start or public pre-K program lose eligibility for Commission-funded child care during the school year when a family's income or work hours change. These early education programs have identified the Child Care and Development Fund (CCDF) eligibility period as a barrier to a child's ability to continue participating in the early education program.

The Commission adopts this amendment with the intent of mitigating this barrier and to further the intent of the Texas Legislature in Texas Human Resources Code §72.003, Texas Government Code §2308.3165, and Texas Education Code, Chapter 29.

Comment: Regarding the continuation of care for a child enrolled in early education as described in §809.50(g), two commenters stated that guidance is needed on whether Boards can terminate or sanction child care if a family fails to pay their share of cost, is delinquent with parent fees, does not redetermine eligibility for the Board's eligibility period, has absences in excess of the Board's policy, or if the parent does not comply with the Parent Responsibility Agreement. The commenters asked under which of these circumstances child care would be terminated-with the exception of any children enrolled in one of these three programs.

Response: The Commission appreciates the comment and understands the commenters' implication that the proposed rule language may have inadvertently created additional barriers for families by allowing one child in the family to remain eligible while other children in the family may lose eligibility. Therefore, the rules at §809.50(g) have been simplified to state that Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of SMI for a family of the same size. This modification makes all of the children in the family-not just the child(ren) in these programs-eligible to continue receiving child care services as long as the family's income does not exceed 85% of SMI and all other eligibility requirements are met. As such, this modification still requires the parent to comply with all of the circumstances described by the commenter in order to maintain eligibility.

This modification is similar to the requirements in §809.50(e), which allows Boards to establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed 85% of SMI for a family of the same size.

Comment: One commenter further stated that §809.14(b) referenced in this section is not a valid citation.

Response: The adopted provision aligns with the intent of §809.14(b), which requires that, pursuant to Texas Education Code §29.158, and in a manner consistent with federal law and regulations, a Board coordinate with school districts, Head Start, and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care is available to meet the needs of low-income parents who are working or attending a job training or educational program. The specific reference to §809.14(b), however, has been removed through modification of this section.

Comment: One commenter asked whether there will there be a change to §809.43 of the child care rules to indicate that these children are to be served as a priority group.

The commenter also asked if the parent's case is being terminated because of fraud, would child care services be allowed to continue for the child enrolled in these programs.

Response: The Commission appreciates the comment. Families with a child who is enrolled in Head Start, Early Head Start, or public pre-K are not considered a priority group. Therefore, §809.43 will not be amended to reflect priority status for families with a child in these programs.

If child care services for the parent are terminated because of fraud, then child care services must not continue-even for the child enrolled in these programs.

§809.51. Child Care during Temporary Interruptions in Work, Education, or Training

New §809.51 addresses child care during a parent's:

-extended temporary medical incapacitation; and

-temporary cessation of work, education, or job training activities.

Child care during extended temporary medical incapacitation and temporary cessation of work, education, or training is not addressed in current rules. In both circumstances, a parent remains employed, in school, or in training but is temporarily unable to meet the weekly work or attendance hour requirements, thereby causing the parent to potentially become ineligible for child care.

New §809.51(a) applies to the temporary cessation of work, education, or job training activities. This situation may occur when an individual remains employed but is temporarily not working, such as with public school employees and students who may no longer be meeting the hourly work, education, or job training requirements during semester or summer breaks. Section 809.51(a) states that if a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities. During the suspension of child care based on the temporary cessation of work, the parent will not be receiving subsidized child care, but the parent will also not be subject to the child care waiting list when they return to their work, education, or job training activities pursuant to their work and attendance hour requirements described in §809.50(a)(2).

Comment: Thirteen commenters supported the rule change to allow a suspension of child care for temporary cessation of work, education, or job training. However, the commenters expressed concern that 90 calendar days would not be enough time to adequately cover all circumstances. Further, the commenters noted that across the state, universities, colleges, and independent school districts have different class schedules in which most breaks exceed 90 days. Six of the commenters suggested that the suspension time frame range from 100 to 120 days, the majority recommended 120 days.

Seven of the commenters recommended that Boards be given the flexibility to extend the suspension period beyond 90 days. One commenter stated that since Boards do not incur any costs while child care is suspended, the number of days should be left to the discretion of the Boards.

Response: The Commission's intent is that child care services be available to support parents who require child care in order to work or attend a job training or educational program, or seek employment as outlined in §809.41(d). The Commission believes that during extended periods where there is a more prolonged cessation of work, education, or job training activities, parents should be encouraged to continue with summer education, training courses, or other employment in order to expedite their move toward self-sufficiency. Further, the focus of the Agency is to provide workforce services including job training and job search services. Part of this focus is to assist people with sustaining economic prosperity. Prolonged periods of being removed from the workforce-i.e., not earning a wage or training for a job-do not promote sustained economic prosperity. The Commission believes that 90 days of temporary cessation of work activities is appropriate. Anything longer than 90 days is not temporary-it is a prolonged period of economic inactivity that should not be encouraged.

Comment: Two commenters asked how the rules should be applied during relatively short school breaks such as Thanksgiving, Christmas, spring break, and other holidays. One commenter noted that if the intention is only to cover summer breaks, a minimum of 120 days would be adequate; however, a minimum of 150 days would be needed if the suspension is intended to also include these shorter breaks. Another commenter suggested allowing child care services to continue for working parents who also participate in training programs but whose total participation hours become reduced because of these shorter breaks. Often parents work while going to school, but during these short breaks do not have enough total hours to meet participation requirements. The commenter suggested modifying the rule to allow a reduction in the work, education, or job training activity requirements if such breaks prevent the parent from participating for the required hours per week.

Response: The Commission appreciates the comment. The 90 days of suspended care is not a maximum amount for a one-year period. Rather, a Board may suspend care for up to 90 days for each event. Therefore, other breaks such as Thanksgiving, Christmas, spring break, and other holidays are sufficiently covered. Regarding the continuation of child care services for working parents who also participate in training programs, Boards currently have the discretion to either continue care or suspend care during these brief breaks. The Commission recognizes that it may not be an efficient use of administrative time to go through the process of suspending care for only two to three weeks and that this may also create a burden on providers if the care is suspended.

New §809.51(b) applies to temporary medical incapacitation. This situation may result from a health impairment that necessitates an employed parent, or a parent in education or job training, to have an extended temporary cessation or reduction in work or attendance hours causing them to be unable to meet the requirements described in §809.50(a)(2). The parent remains employed, in school or in training, but cannot work, attend school or training for an extended period of time, though the parent intends to return to his or her employment, education, or job training following the temporary incapacitation. Section 809.51(b) states that if a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:

-Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and

-Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation.

Comment: Nine commenters asked that Boards be allowed to continue child care services for up to 60 days. One commenter stated that basing the continuation of care on the individual family's circumstances for up to 60 days is a reasonable policy and limit, and further stated that 60 days has been the Board's practice since no current rule directly addresses this issue.

Three commenters stated that 30 days of care during a temporary medical incapacitation may not be sufficient for some commonly seen incapacitations. Two commenters cited the example of childbirth where the parent is typically incapacitated for an average of 45 days. In this situation, even if the mother is physically able to return to work after 30 days, child care is difficult to obtain because many providers will not care for a child less than six weeks of age.

One commenter stated that 30 days of continued care followed by 60 days of suspended care will be problematic if a parent is not able to return to work before 30 days. Citing the examples of major surgeries and injuries, the commenter stated that a parent is typically unable to return to work for at least 6 weeks during which time the parent is restricted from lifting and other physical activities necessary to care for a child. The commenter stated that by limiting care to 30 days, the Commission will be inhibiting the parent's ability to recuperate and could actually lengthen the time before the parent is able to return to work. The commenter further stated that if the parent returns to work beyond 30 days, securing a provider will be difficult due to many regulated providers having limited slots for young children. To prevent these problems, the commenter asked the Commission to consider allowing care for up to 60 days.

Two commenters stated that allowing at least 60 days of continued care would be more reasonable to support the parent given that the longer time frame aligns more closely with the Family and Medical Leave Act.

Three commenters stated that 30 days of continued care is not adequate for a parent to both recuperate from a medical issue and to take care of a child(ren) when care is discontinued. One commenter stated that if the medical documentation excuses the parent from work, then that should be reason enough to continue care until the parent is able to return to work. To further support this, the commenter stated that medical complications typically lengthen the incapacitation period, and if the parent cannot work, should the child/ren be watched by an incapacitated parent? These commenters stated that 60 days is more reasonable to support the parent's ability to return to work.

Response: The Commission agrees and has modified the rules to state that child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation. This change should accommodate parents in the situations described by the commenters.

Comment: Six commenters asked that Boards be given discretion for determining how long child care can continue after a parent has a temporary medical incapacitation and is not able to meet the activity requirements. The commenters stated that be-

cause individual family needs vary, the determination should be based on the medical documentation provided by the parent.

Response: The Commission understands the need for Board discretion in determining the length of care during temporary medical incapacitations and has modified the rules to allow discretion for determining the length of continued care for up to 60 days. Further, the Commission believes that setting a maximum number of paid care days establishes consistency among the local workforce development areas. While some Boards may be able to afford a longer period of child care, it is important that all parents be provided the same treatment.

Comment: One commenter stated that Boards should be able to grant a waiver to extend child care services beyond 30 days if the parent presents medical documentation showing that the parent is unable to care for the child.

Response: The Commission believes that the rule modification to allow up to 60 days of continued care instead of 30 days provides a sufficient time and a waiver would not be necessary.

Comment: One commenter expressed gratitude to the Commission for addressing temporary medical incapacitation and stated that it will provide recovery time for the customer and offer some stabilization for the child. The commenter further agreed with the Commission's proposed rule allowing the provider to fill open slots created by the suspension.

Response: The Commission appreciates the comment and support.

The following new provisions apply to both the temporary cessation of work, education, or job training activities and medical incapacitation:

New §809.51(c) states that upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation. The Commission believes that requiring the provider to hold the slot open for the child places an undue financial burden on the child care provider. Additionally, the parent is not required to reapply for child care services or return to the child care wait list.

New §809.51(d) sets forth the required documentation a parent must provide prior to the suspension of child care during temporary interruptions in work, education, or job training, or temporary medical incapacitation.

Section 809.51(d)(1) states that a parent must provide documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation.

If a parent becomes incapacitated because of a sudden illness or medical emergency, the 60-day maximum period in which child care services may continue allows the parent adequate time to obtain and provide the documentation. Boards may determine what is considered acceptable documentation from the employer or training provider.

Section 809.51(d)(2) states that a parent must provide written notification to the child care contractor of his or her intent to enroll in an educational institution following the temporary cessation of educational activities. Boards may determine what is considered acceptable and timely written notification of the parent's intent to return to the educational program.

Comment: One commenter stated that documentation of registration for the fall semester often is not available prior to the end of the spring semester and requested that the documentation be required to be provided prior to reinstating care following a suspension period. Additionally, one commenter noted that the requirement that a parent must provide documentation prior to any suspension of services creates a burden for college students who may not have registered for the next semester prior to the last day of classes. If they have not registered, it may be difficult to get a letter from the college or training program stating they plan to return. This seems like an unnecessary step since child care will not resume at the end of the suspension unless they are actively enrolled and attending school.

Response: The Commission agrees and has modified the rules to state that prior to any suspension of child care as described in this section, a parent must provide written notification to the child care contractor of the parent's intent to enroll in an education institution following the temporary cessation of educational activities. Boards may determine the requirements of the written notification.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission adopts the following amendments to Subchapter D:

§809.74. Parent Appeal Rights

Section 809.74(a) is amended to include Choices caseworkers and FSE&T caseworkers and to add the suspension of child care as an action for which a parent has the right to request a hearing pursuant to Chapter 823 of the Commission's rules. The Commission believes the suspension of care as described under new §809.51 is an adverse action, pursuant to §823.2(2), similar to the currently appealable denial, delay, termination or reduction in child care services and, therefore, it is eligible for appeal by the parent. However, as described in the following section-§809.75(b)-child care must not continue during the appeal.

Sections 809.74(d) and (e) are removed because the information is contained in §809.74(a).

Comment: One commenter questioned the need or benefit-even for the customer-to add a formalized appeal process for this priority group. The commenter stated that with Choices child care being very fluid with frequent enrollments and terminations occurring, it is likely that a Choices recipient would be reenrolled in child care before the appeal on the termination could be submitted. The commenter further stated that providers are adversely impacted whenever payments to them are expected but never made because the reimbursement is later deemed ineligible. Additionally, the commenter stated that Choices customers could incur out-of-pocket child care costs which may not be affordable to them and which are not incurred under the current process.

Response: The appeal provisions for Choices customers are not new requirements and were in Chapter 811 Choices rules and Chapter 809 Child Care Services rules prior to the adoption of the new Chapter 823 Integrated Complaints, Hearings, and Appeals rules. The revisions made to this section of the rules are simply to streamline existing language and to add suspensions as an adverse action that can be appealed.

Further, the Commission does not foresee problems with providers not receiving payments for child care. Unless and until the provider has been notified that child care will be discontinued

as of a certain date, child care should continue seamlessly with providers reimbursed for the care provided.

§809.75. Child Care during Appeal

Section 809.75(b)(7) removes the term "parent fees" and replaces it with the term "parent share of cost" to align with terminology used throughout this chapter.

New §809.75(b)(9) states that child care shall not continue during the appeal if the appeal is due to the suspension of child care services pursuant to §809.51 (related to Child Care during Temporary Interruptions in Work, Education, or Training). If, for example, the Board's child care contractor determines that the length of the suspension period for temporary work cessation or medical incapacitation should be 30 days rather than the maximum allowable 60 or 90 days, parents may appeal the length of the suspension period. However, because child care services will be suspended for only a limited amount of time with the understanding that services will continue following the brief suspension period, allowing child care to continue during any appeal would essentially nullify the suspension period.

Comment: One commenter stated that the proposed rule change will significantly increase Boards' administrative costs for hearing appeals since appeal rights for Choices recipients are currently limited. The commenter further stated that a customer who has child care denied under Choices or FSE&T has not participated according to Choices program rules and so the appeal should be based on nonparticipation with child care program requirements, not the denial of a support service. In summary, the commenter stated that child care is provided only as a condition of Choices program participation, not apart from the Choices program itself.

In reference to §809.75(b)(5), the commenter asked what is meant by a "sanctions finding" against the parent participating in the Choices program.

Response: The Commission again emphasizes that the appeal rights for Choices customers are not new provisions, but instead have been longstanding requirements under the Chapter 811 Choices rules and Chapter 809 Child Care Services rules. Under current rules, parents may appeal denials, delays, reductions, or terminations of their child's eligibility or enrollment in child care. However, the Commission believes that suspension of care is also an adverse action as defined in Chapter 823. Therefore, an amendment to this section is necessary to give parents the right to appeal suspensions. With suspensions being the only new appealable action and with Boards already responsible for conducting hearings, the Commission does not anticipate that Boards' administrative costs will increase significantly as a result of these rule changes.

With regard to §809.75(b)(5), the term "sanctions finding" refers to a determination made by DFPS in which there is either a disqualification or a penalty applied to a case because a customer failed to comply with a program requirement.

COMMENTS WERE RECEIVED FROM:

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Ann L. McCain, Workforce Solutions of Central Texas

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Mark Murtagh, Urban Planner II, Workforce Solutions for North Central Texas

Randy Reed, Deputy Executive Director, Workforce Solutions Northeast Texas

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Beejay Williams, Deputy Director, Workforce Solutions

Lisa Witkowski, Future Workforce Director, Workforce Solutions for Tarrant County

Ron Hubbard, Early Childhood Coordinator, City of Austin Health and Human Services Department

Shari Anderson, Child Care Assistance Sr. Manager, ChildCare-Group

Patricia Walker Looper, ChildCare Associates Director, Tarrant County CCMS

Susan Thomas, Rural Alamo Child Care Coordinator

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.13, 809.19, 809.20

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.13. Board Policies for Child Care Services.

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 801 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

(c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.

(d) At a minimum, a Board shall develop policies related to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);

(2) maintenance of a waiting list as described in §809.18(b);

(3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;

(4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers that offer transportation;

(5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

(6) provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);

(7) minimum activity requirements for parents as described in §809.48 and §809.50;

(8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);

(9) frequency of eligibility redetermination as described in §809.42(b)(2);

(10) Board priority groups as described in §809.43(a);

(11) transfer of a child from one provider to another as described in §809.71(3);

(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;

(13) attendance standards and procedures as provided in §809.92(b)(4), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);

(14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d);

(15) procedures for fraud fact-finding as provided in §809.111; and

(16) procedures for imposing sanctions when a parent fails to comply with the provisions of the parent responsibility agreement (PRA) as described in §809.76(c).

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) A Board shall establish enhanced reimbursement rates for:

(1) child care providers participating in integrated school readiness models developed by the State Center;

(2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315; and

(3) child care providers that obtain Texas School Ready!™ certification pursuant to Texas Education Code §29.161.

(c) The minimum reimbursement rates established under subsection (b) of this section shall be at least 5% greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.

(d) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in subsection (b) of this section.

(e) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804479
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 8, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-0829

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.43, 809.44, 809.46, 809.48, 809.50, 809.51

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.50. At-Risk Child Care.

(a) A parent is eligible for child care services under this section if:

(1) the family income does not exceed the income limit established by the Board pursuant to §809.41(a)(2)(A); and

(2) child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.

(b) A Board may allow a reduction to the work, education, or job training activity requirements in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in these activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, the following shall apply:

(1) each credit hour of postsecondary education counts as three hours of education activity per week;

(2) each credit hour of a condensed postsecondary education course counts as six education activity hours per week; and

(3) teen parents attending high school or the equivalent shall be considered as meeting the education requirements in subsection (a)(2) of this section.

(d) When calculating income eligibility for a child with disabilities, a Board shall deduct the cost of the child's ongoing medical expenses from the family income.

(e) Boards may establish a higher income eligibility limit for teen parents than the eligibility limit established pursuant to §809.41(a)(2)(A) provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

(f) A teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

(g) Boards may establish a higher income eligibility limit for families with a child who is enrolled in Head Start, Early Head Start, or public pre-K provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training.

(a) If a parent has a temporary cessation of work, education, or job training activities and is unable to meet the requirements described in §809.50(a)(2), child care may be suspended for no more than 90 calendar days from the documented effective date of the cessation of these activities.

(b) If a parent has a documented temporary medical incapacitation and is unable to meet the work, education, or job training requirements described in §809.50(a)(2), the following shall apply:

(1) Child care may be allowed to continue for no more than 60 calendar days from the documented effective date of the temporary medical incapacitation; and

(2) Child care may be suspended for no more than 30 calendar days after the end of the 60-day calendar period following the documented temporary medical incapacitation, as described in subsection (b)(1) of this section.

(c) Upon the parent's return to work, education, or job training activities, a Board is not required to resume child care at the same provider used prior to the documented temporary cessation of these activities or medical incapacitation.

(d) Prior to any suspension of child care as described in this section, a parent must provide:

(1) documentation from the employer or training provider stating that the parent will be returning to work or job training activities following the temporary cessation of these activities or medical incapacitation; or

(2) written notification to the child care contractor of the parent's intent to enroll in an educational institution following the temporary cessation of educational activities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804480
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 8, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-0829

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40 TAC §§809.50 - 809.52

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted repeals will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804482
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 8, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-0829

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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §809.74, §809.75

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2008.

TRD-200804483
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 8, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-0829

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 3, Tax Administration. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this rule review may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

TRD-200804521
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: August 21, 2008

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Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board proposes to review Chapter 397, General Rules of Practice and Procedure, §§397.1 - 397.33, pursuant to the Texas Government Code, §2001.039.

The Board will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the proposed review may be submitted to Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

TRD-200804632
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: August 26, 2008

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The Polygraph Examiners Board proposes to review Chapter 401, Grievance Policy, §401.1, pursuant to the Texas Government Code, §2001.039.

The Board will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Comments on the proposed review may be submitted to Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087 MSC 0700, Austin, Texas 78773-0001.

TRD-200804633
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: August 26, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.602(b)

Scientific Name	Common Name(s)
Acoelorraphe wrightii	Everglades palm
Adonidia merrilli (= *Veitchia*)	Manila palm, Christmas palm
Aiphanes spp.	Multiple crown palm, Ruffle palm
Areca catechu	Betel nut palm
Areca spp.	
Bactris plumeriana	Coco macaco, Prickly pole
Bismarckia nobilis	Bismarck palm
Caryota mitis	Fishtail palm
Chamaedorea spp.	Chamaedorea palm
Cocos nucifera	Coconut palm
Dictyosperma album	Princess palm, Hurricane palm
Dypsis decaryi	Triangle palm
Dypsis lutescens (= *Chrysalidocarpus*)	Areca palm, Golden cane palm, Butterfly palm
Elaeis guineensis	African oil palm
Licuala grandis	Licuala palm, Ruffled fan palm
Livistona chinensis	Chinese fan palm
Phoenix canariensis	Canary Island date palm
Phoenix dactylifera	Date palm
Phoenix reclinata	Senegal date palm
Phoenix roebelenii	Pygmy date palm, Roebelenii palm
Pritchardia pacifica	Fiji fan palm
Pseudophoenix sargentii	Buccaneer palm
Pseudophoenix vinifera	Cacheo, Katié
Ptychosperma elegans	Solitaire palm, Alexander palm
Ptychosperma macarthurii	Macarthur palm
Rhapis excelsa	Lady palm, Bamboo palm
Roystonea borinquena	Royal palm
Syagrus romanzoffiana	Queen palm
Syagrus schizophylla	Arikury palm
Washingtonia filifera	Fan palm
Washingtonia robusta	Mexican fan palm
Wodyetis bifurcata	Foxtail palm
Heliconia bihai	Macaw flower
Heliconia caribaea	Wild plantain, Balisier
Heliconia psittacorum	Parrot flower
Heliconia rostrata	Lobster claw Heliconia
Musa acuminate	Edible banana, Plantain
Musa balbisiana	Wild banana
Musa uranoscopus	Red-flowering banana
Musa x paradisiacal (= *Musa sapientum*)	Edible banana, Plantain
Musa corniculata	Red banana
Musa spp.	Banana, Plantain

Pandanus utilis	Screw pine
Strelitzia reginae	Bird of paradise, Crane flower
Ravenala madagascariensis	Traveler's tree
Etlingera elatior (= *Nicolaia*)	Red torch ginger
Alpinia purpurata	Red ginger, Jungle king/queen
Alpinia zerumbet (*Pers.*)	Shell ginger; Pink porcelain lily; Shell plant

Figure: 10 TAC §80.100(b)(8)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

MAKING AN INFORMED DECISION ABOUT BUYING A MANUFACTURED HOME

IF YOU HAVE QUESTIONS CALL 1-800-500-7074

WWW.TDHCA.STATE.TX.US/MH

Ownership of ANY home brings many responsibilities. Buying a manufactured home involves many important and unique considerations. This disclosure is to assist you in recognizing and understanding many of those factors. Please read it carefully.

CHOOSING A MANUFACTURED HOME AS YOUR HOME: Manufactured homes come in a variety of sizes, styles, design features, amenities, and price ranges. All manufactured homes are built to federal standards established by the federal Department of Housing and Urban Development (HUD). Also, the federal government and the state of Texas requires manufacturers, retailers and installers to give certain warranties on manufactured homes. The type of warranties you receive will depend on whether you are purchasing a new or used manufactured home. You have the right to see the manufacturer's warranty and the retailer's warranty before entering into a binding agreement to purchase a manufactured home.

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initials

CHOOSING A MANUFACTURED HOME RETAILER: The State of Texas licenses and oversees manufacturers, retailers, brokers, salespersons, rebuilders, and installers of manufactured homes. The agency responsible for this licensing and oversight is the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "Department"). Your properly licensed manufactured home retailer should display, or be willing to show you, its license in its sales office. **Dealing with licensed parties can provide important consumer protections.**

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initials

DEPOSITS: You may be required by a manufactured home retailer to place a deposit on a home, regardless of whether the home is on the retailer's sales lot, is being sold at another location, or will be ordered from a factory. The amount of the deposit is determined between you and your retailer. The deposit becomes a down payment upon execution of a binding written purchase agreement. You have the right to demand a refund of the deposit or down payment, and receive that refund within 15 days thereafter, if you timely and properly rescind the purchase agreement.

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initials

FINANCING OPTIONS: A manufactured home in Texas has tremendous flexibility when it comes to financing because it can be financed as personal property (typically a consumer loan secured by the home only) or, if you own the land the home is on (or have a qualifying long term lease on the land) as real property (typically a mortgage loan secured by the home and the land). You should talk to possible lenders about the terms they can offer. If you think one lender is offering too high a rate, talk to another lender.

Consumer lenders must generally be registered with the Office of the Consumer Credit Commissioner. Mortgage loans are usually originated by mortgage brokers (licensed with the Savings and Mortgage Lending Department), mortgage bankers (registered with the Savings and Mortgage Lending Department), or financial institutions (regulated by state and/or federal regulators, depending on the type of financial institution).

WHEN YOU MAKE A DECISION ABOUT BUYING A MANUFACTURED HOME, PLAN FOR FLEXIBILITY AND CHANGE.

YOUR LOAN WILL BE A **MAJOR** FACTOR IN DETERMINING YOUR PAYMENTS, BUT THERE ARE OTHER IMPORTANT FACTORS YOU SHOULD ALSO THINK ABOUT, SUCH AS:

- Adjustable rate loans – If rates go up, your loan payments will go up.
- Property taxes – Changes in property valuation and changes in tax rate can result in changes in your payments.
- Insurance – If premiums increase, your payments will go up.
- Lot rent – If you are renting the lot your home is on, your rent may be subject to increase.

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initials

LOCAL RESTRICTIONS AND REQUIREMENTS (ZONING): Depending on where a home is to be located it may be subject to special local requirements, including zoning and deed restrictions. These local requirements may affect where the home can be placed and may also involve other related requirements (and expenses) such as size requirements, construction requirements, Contact the local municipality, county, and subdivision manager to find out what, if any, requirements of this sort may apply to any site where you are going to place a manufactured home.

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initials

SITE PREPARATION: A consumer is responsible for proper preparation of the site. If you do not think you can prepare your site properly, consider hiring someone else with the right experience and equipment to do it for you. Proper site preparation includes a site for placement of the home that has good drainage so that water will not collect or run under or around the home; and firm compacted soil with no stumps, debris, or other matter. The site that is selected and prepared also needs to meet any setback or other placement requirements and have access to any required water, septic system, and utilities.

PROPER SITE PREPARATION IS ESSENTIAL!

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initials

INSTALLATION: If you are purchasing a NEW manufactured home. Installation must be included. If you are purchasing a USED manufactured home, installation may or may not be included. If installation is not included and you arrange for it yourself, remember, ONLY A LICENSED INSTALLER may install a manufactured home. The installer who actually installs the home must also provide a warranty.

PROPER INSTALLATION BY A LICENSED INSTALLER IS REQUIRED BY LAW IN ORDER FOR A HOME TO BE OCCUPIED.

If you are buying a home that has already been installed, you should ask the selling retailer if they will check the leveling, check for the presence (if required) and condition of any vapor retarder, check anything else regarding the foundation/stabilization system, or provide any other installation-related services.

If you acquire a used manufactured home that is already installed in a Wind Zone II county but the home is a Wind Zone I home, which means that home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area, the home cannot be installed in a Wind Zone II area unless it was constructed before September 1, 1997.

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UPKEEP AND MAINTENANCE: ANY home requires regular upkeep and maintenance – things like periodic checking of and repairs to the roof, keeping vents and filters clear, maintaining septic systems and wells in safe and sanitary working order, caulking to prevent leaks, and periodic painting. Also, depending on the foundation system you choose, a manufactured home may require periodic checking to be sure that it is still level and that the anchors and straps are secure.

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initials

FOUNDATION MAINTENANCE: You must accept all responsibility for maintenance of the site upon closing. These responsibilities include: maintaining good drainage around the home, preventing soil erosion, periodic inspections of foundation supports and anchorage, and any leveling or adjustment that may be required unless contractually agreed otherwise. Homes located in areas that have soils with high clay content that expands and contracts must maintain consistent moisture levels. This may include watering around the foundation during dry summer months and managing the size and proximity of the vegetation near the foundation.

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initials

LOT RENT: If you rent the lot your home is on, in addition to the possibility of rent increases, it is possible that the property owner could decide to change the use of the land and not renew your lease. Although you would be given advance notice, this would mean that you would have to move your home and have it installed somewhere else.

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initials

WATER AND UTILITIES: Be sure that your lot has access to water. If you must drill a well, consider contacting several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system. Be sure that any utilities you will need are available at your site and, if they are not, find out what will be involved in getting them delivered and connected.

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initials

SEWER CONNECTIONS OR SEPTIC SYSTEMS: If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support a septic system. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

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initials

HOMEOWNERS ASSOCIATIONS AND FEES: Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

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PROPERTY TAXES: Manufactured homes are appraised and subject to property taxes. Depending on the type of loan you have, your lender may escrow for these taxes, and this will increase your monthly payments. Whether you select personal property or real property status for your home may impact any homestead exemption that you may obtain to reduce your tax liability. Talk with the county tax office if you have any questions. Failing to pay your taxes or make arrangements with the tax assessor-collector may place you at risk of having tax liens recorded on your home and, possibly, having the home foreclosed for non-payment of taxes. If you do not have a lender that escrows for the taxes, the tax assessor-collector will work out an escrow arrangement with you if requested.

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initials

INSURANCE: Your lender will almost certainly require you to obtain insurance. You should request quotes from the agent of your choice to obtain the insurance. Even if you do not have a lender, it is a good idea to obtain insurance to protect your home and yourself.

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initials

THE TEXAS MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND (the "FUND"): The Fund is established by law to protect consumers who incur certain actual damages arising from specified violations of law involving acts or omissions of licensees. To learn more about the Fund you can check the Department's website at: www.tdhca.state.tx.us/mh or call the Department for a printed description of the Fund and how it works. Claims on the Fund must be verified and must be made within two years from the date of the act or omission or when it was discovered or reasonably should have been discovered.

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initials

RIGHT OF RESCISSION: Once you enter into a contract with a selling retailer to acquire a manufactured home, you have a right to rescind the contract. You may, not later than the third day after the applicable contract is signed, rescind the contract without penalty or charge. The right to rescind may be modified or waived only if you have a *bona fide* emergency. The Department has rules about the detailed requirements for waivers and modifications. If you grant someone other than the retailer a lien on the home you are buying, the right of rescission automatically goes away when the lien is recorded with the TDHCA.

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initials

This **Six Page Disclosure** was provided to me/us by the retailer and/or lender shown below on this date. It was provided to me/us before I/we completed a credit application (if a financed transaction), or before I/we signed a contract to purchase, exchange, or lease-purchase a manufactured home.

DATE	RETAILER or LENDER
	LICENSE NUMBER (if a retailer)
CUSTOMER signature	CUSTOMER signature
Customer printed name	Customer printed name
Date:	Date:

Figure: 10 TAC §80.100(b)(19)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars ($100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification

This application is for:
- ☐ New home application
- ☐ Used home application
- ☐ Other

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(For Department Use Only) Coding:

Lien on file: Y / N Lienholder Code

County Code: Right of Surv.: Y / N

Retailer #: Manufacturer #:

BLOCK 2(a): Home Information (required)

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Complete Serial Number*	*Weight*	*Size**	**NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	

2(b) Is home being sold? ☐ No ☐ Yes
If yes, and **if there is/are no HUD Label(s) or Texas Seal(s)** on your home, a Texas Seal will be need to be purchased and will be issued to each section of your home at an **additional cost** of $35.00 per section.
Single - $35 Double - $70 Triple - $105

BLOCK 3: Home Location (required)

Physical Location of Home: *(or 911 address)*

Physical Address (cannot be a Rt. or P. O. Box) *City* *State* *ZIP* *County*

Was home moved for this sale? ☐ No ☐ Yes
Was Home Installed for this sale? ☐ No ☐ Yes If yes, provide installer information below, if known

Installer Name, address and phone:

BLOCK 4: Ownership Information (required)

4(a) Seller(s) or Transferor(s)		4(b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

4(c) Date of sale, transfer or ownership change:

4(d) Did the buyer trade-in a home to purchase this home? ☐ No ☐ Yes If yes, the application transferring the ownership to the Retailer must be attached to this application. Provide the following information on the home traded in:

HUD Label _____, Serial No. _____

HUD Label #:	Serial #:	GF# (for title co.):

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.

☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):

☐ I (we) own the real property that the home is attached to. ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Legal description must be provided for real property: _____

_____

If a title company, list your file or GF #: _____

☐ **Inventory** – ***(FOR RETAILER USE ONLY)*** Retailer number must be provided in Block 4b if this election is checked.

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

☐ Residential Use (as a dwelling) OR

☐ Non-Residential - Check **one** of the following: ☐ *Business Use* ☐ *Salvage*

BLOCK 8: Liens – Will there be any liens on the home? ☐ No ☐ Yes If yes, the Notice of Lien form MUST be completed and attached. To prevent an SOL from being issued without a lien, in the event the Notice of Lien is detached, indicate name and phone number of lienholder's contact person and phone number.

Lienholder's Representative: _____ **Phone:** _____

BLOCK 9: Special Mailing Instructions.

IF a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.

Name:	
Company:	
Street Address:	
City, State, Zip:	
Area Code/Phone	

BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.

☐ *Seller* certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).

☐ *Seller* certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.

10(a) Notarized signature of each seller/transferor	10(b) Notarized signature of each purchaser/transferee or owner
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*

Figure: 10 TAC §80.100(b)(44)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: www.tdhca.state.tx.us/mh/index.htm

STATEMENT FROM TAX ASSESSOR-COLLECTOR

To meet the requirements of Texas Occupations Code 1201.206(g)

BLOCK 1: Home Information

Manufacturer:_____ Model:_____

Serial Number:_____ Label # and/or Seal #:_____

Tax Roll Account No.:_____ Physical Address: _____

BLOCK 2: Statement of Facts

Used to confirm that taxes have been paid and/or escrowed enabling the transfer of ownership of a used manufactured home (providing all other requirements are met).

Check either A, B, or C:

Date of Sale: _____ / _____ / _____

☐ **A. Not on the tax roll**
This home is not on the tax roll for this county.

☐ **B. The present tax year has been billed:**
- The present and previous year's taxes have been billed and paid. There are NO PERSONAL PROPERTY TAXES DUE.

☐ **C. The present tax year has NOT BEEN billed:**
- The previous tax year has been billed and paid in full. No taxes are due.
- The current tax year has not been billed (levied), but taxes have been estimated, paid and placed in escrow and any difference owed will be due when taxes are billed.

BLOCK 3: Signature *(Notarization is optional)*

_____ _____

(Signature of tax assessor-collector's authorized representative) *(Name of County making this statement)*

_____

(Printed name and title of authorized representative)

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this _____ day of _____ 20 ____.

_____

(Name of Notary)

_____ *SEAL*

(Notary Public)

_____

(Commission Expires) *Notary Public State of Texas*

Figure: 16 TAC §33.25(c)

Permit/License Type [agency code]	**Texas Alcoholic Beverage Code Chapter**
Agent's Permit [A]	Chapter 35
Manufacturer's Agent's Permit [T]	Chapter 36
Agent's Beer License [BK]	Chapter 73

Figure: 16 TAC §33.25(d)

Permit/License Type [agency code]	**Texas Alcoholic Beverage Code Chapter**
Airline Beverage Permit [AB]	Chapter 34
Beverage Cartage Permit [PE]	Chapter 44
Bonded Warehouse Permit [J]	Chapter 46
Bonded Warehouse Permit (Dry Area) [JD]	Chapter 46
Brewpub License [BP]	Chapter 74
Carrier's Permit [C]	Chapter 41
Caterer's Permit [CB]	Chapter 31
Direct Shipper's Permit [DS]	Chapter 54
Distiller's & Rectifier's Permit [D]	Chapter 14
Food and Beverage Certificate [FB]	Chapter 25
Forwarding Center Authority [FC]	Rule §35.6
Industrial Permit [I]	Chapter 38
Local Industrial Alcohol Manufacturer's Permit [LI]	Chapter 47
Market Research Packager's Permit [MR]	Chapter 49
Minibar Permit [MI]	Chapter 51
Mixed Beverage Permit [MB]	Chapter 28
Mixed Beverage Restaurant Permit [RM] with FB	Chapter 28
Mixed Beverage Late Hours [LB]	Chapter 29
Passenger Train Beverage Permit [PT]	Chapter 48
Private Carrier's Permit [O]	Chapter 42
Private Club Exemption Certificate Permit [NE]	Chapter 32
Private Club Registration Permit [N]	Chapter 32
Private Club Beer and Wine Permit [NB]	Chapter 32
Private Club Late Hours Permit [NL]	Chapter33
Promotional Permit [PR]	Chapter 54
Wine Bottler's Permit [Z]	Chapter 18
Winery Permit [G]	Chapter 16
Winery Storage Permit [GS]	Chapter 45

Figure: 16 TAC §33.25(e)

Permit/License Type [agency code]	**Texas Alcoholic Beverage Code Chapter**
Agent's Manufacturing Warehousing Permit [AW]	Chapter 55
Brewer's Permit [B]	Chapter 12
Local Cartage Permit [E]	Chapter 43
Local Cartage Transfer Permit [ET]	Chapter 43
Local Distributor's Permit [LP]	Chapter 23
Private Storage Permit [L]	Chapter 45
Public Storage Permit [K]	Chapter 45
Package Store Permit [P]	Chapter 22
Wine Only Package Store Permit [Q]	Chapter 24
Out-of-State Wine Only Package Store Permit [QO]	Chapter 24
Package Store Tasting Permit [PS]	Chapter 52
Non-Resident Seller's Permit [S]	Chapter 37
Non-Resident Brewer's Permit [U]	Chapter 13
Storage License [SL]	Chapter 75
Wholesaler's Permit [W]	Chapter 19
General Class B Wholesaler's Permit [X]	Chapter 20
Local Class B Wholesaler's Permit [LX]	Chapter 21
Branch Distributor's License [BC]	Chapter 66
General Distributor's License [BB]	Chapter 64
Importer's License [BI]	Chapter 67
Importer's Carrier's License [BJ]	Chapter 68
Local Distributor's License [BD]	Chapter 65
Manufacturer's License [BA]	Chapter 62
Manufacturer's Warehouse License [MW]	Chapter 62
Non Resident Manufacturer's License [BS]	Chapter 63
Beer Retailer's Off Premise License [BF]	Chapter 71
Beer Retailer's On Premise License [BE] Counties under 1.4 million population	Chapter 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Original	Chapter 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Renewal	Chapter 69
Retail Dealer's On Premise Late Hours License [BL]	Chapter 70
Wine and Beer Retailer's On Premise License [BG] Counties under 1.4 million population	Chapter 25
Wine and Beer Retailer's On Premise License [BG] Counties over 1.4 million population	Chapter 25
Wine and Beer Retailer's Off Premise License [BQ]	Chapter 26
Wine and Beer Retailer's Permit Railway Car [Y]	Chapter 25
Wine and Beer Retailer's Permit Excursion Boat [V]	Chapter 25
Food and Beverage Certificate [FB]	Chapter 25

Figure: 16 TAC §33.25(f)

Permit/License Type [agency code]	**Texas Alcoholic Beverage Code Chapter**
Daily Temporary Mixed Beverage Permit (Per Day) [TB]	Chapter 30
Daily Temporary Private Club Registration Permit [TN]	Chapter 33
Temporary Charitable Auction Permit [CA]	Chapter 53
Temporary License	Chapter 72

Figure: 30 TAC Chapter 285--Preamble

Number of bedrooms/living area of home	Minimum aerobic treatment Unit Capacity (gallons per day)
Three bedroom and < 2,500 sq. ft	400

Figure: 30 TAC §285.90(2)

Figure 2. ModelAffidavit to the Public.

THE COUNTY OF (insert county name) §
STATE OF TEXAS §

AFFIDAVIT

According to Texas Commission on Environmental Quality Rules for On-Site Sewage (OSSFs) Facilities, this document is filed in the Deed Records of (insert county name) County, Texas.

I

The Texas Health and Safety Code, Chapter 366 authorizes the Texas Commission on Environmental Quality (commission) to regulate on-site sewage facilities (OSSFs). Additionally, the Texas Water Code (TWC), §5.012 and §5.013, gives the commission primary responsibility for implementing the laws of the State of Texas relating to water and adopting rules necessary to carry out its powers and duties under the TWC. The commission, under the authority of the TWC and the Texas Health and Safety Code, requires owners to provide notice to the public that certain types of OSSFs are located on specific pieces of property. To achieve this notice, the commission requires a recorded affidavit. Additionally, the owner must provide proof of the recording to the OSSF permitting authority. This recorded affidavit is not a representation or warranty by the commission of the suitability of this OSSF, nor does it constitute any guarantee by the commission that the appropriate OSSF was installed.

II

An OSSF requiring a maintenance contract, according to 30 Texas Administrative Code §285.91(12) will be installed on the property described as (insert legal description):

The property is owned by (insert owner's full name)

This OSSF shall be covered by a continuous service policy for the first two years. After the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days or maintain the system personally.

Upon sale or transfer of the above-described property, the permit for the OSSF shall be transferred to the buyer or new owner. A copy of the planning materials for the OSSF may be obtained from (insert name of permitting authority).

WITNESS BY HAND(S) ON THIS ____ DAY OF _____, _____.

_____

_____
(Owner(s) signature(s))

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF _____, _____.

_____
Notary Public, State of Texas
Notary's Printed Name:
My Commission Expires:

Figure: 30 TAC §285.90(3)

Figure 3. Sample Testing and Reporting Record.

This testing and reporting record shall be completed, signed, and dated after each maintenance check and test. One copy shall be retained by the maintenance provider performing the maintenance. The second copy shall be sent to the local permitting authority and the third copy shall be sent to the system owner.

1. Required frequency of maintenance check and tests - (daily, weekly, monthly, quarterly, every 4 months).
   Actual date of test: _____

2. System inspection:

Property Address: _____
Permit Number: _____
Person Performing Inspection: _____

_____
(Signature of Licensed Maintenance Provider)

Company Name (if applicable): _____

Company physical address: _____

_____

Company Telephone: _____

Inspected Item	Operational	Inoperative
Aerators		
Filters		
Irrigation Pumps		
Recirculation Pumps		
Sludge Condition		
Disinfection Device		
Chlorine Supply		

Electrical Circuits

Distribution System

Sprayfield Vegetation/Seeding
(if applicable)

Other as Noted

3. Repairs to system (list all components replaced):_____
_____
_____

4. Tests required and results:

Test	Required Yes No	Results mg/l, mpn/100 ml, or trace	Test Method
BOD (Grab)			
TSS (Grab)			
Cl_2 (Grab)			
Fecal Coliform			

5. Date(s) responded to owner complaints during reporting period (attach copy of complaint and findings):
_____

6. General comments or recommendations: _____
_____
_____

Figure: 30 TAC §285.91(2)

Table II. Septic Tank and Aerobic Treatment Unit Sizing.

SEPTIC TANK MINIMUM LIQUID CAPACITY

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:

$$V = 750 \text{ gallons}$$

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:

$$V = 1000 \text{ gallons}$$

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:

$$V = 1250 \text{ gallons}$$

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:

$$V = 2.5\ Q$$

5. For Q greater than or equal to 1001 gal/day:

$$V = 1{,}750 + 0.75Q$$

AEROBIC TREATMENT UNIT SIZING FOR RESIDENCES

Number of bedrooms/living area of home	Minimum Aerobic Tank Treatment Capacity (gallons per day)
Three bedrooms and < 2,501 sq. ft.	400
Four bedrooms and < 3,501 sq. ft. or Less than four bedrooms and 2,500 < sq. ft. < 3,501	480
Five bedrooms and < 4,501 sq. ft. or Less than five bedrooms and 3,500 < sq. ft. < 4,501	600
Six bedrooms and < 5,501 sq. ft. or Less than six bedrooms and 4,500 < sq. ft. < 5,501	720
Seven bedrooms and < 7,001 sq. ft. or Less than seven bedrooms and 5,500 < sq. ft. < 7,001	840
Eight bedrooms and < 8,501 sq. ft. or Less than eight bedrooms and 7,000 < sq. ft. < 8501	960

Nine bedrooms and < 10,001 sq. ft. or Less than nine bedrooms and 8,500 < sq. ft. < 10,001	1,080
Ten bedrooms and < 11,501 sq. ft. or Less than ten bedrooms and 10,000 < sq. ft. < 11,501	1,200
For each additional bedroom above ten or 1,500 additional square feet of living area above 11,500	120

Figure: 30 TAC §285.91(3)

Table III. Wastewater Usage Rate.

This table shall be used for estimating the hydraulic loading rates only. Sizing formulas are based on residential strength BOD_5. Commercial/institutional facilities must pretreat their wastewater to 140 BOD_5 prior to disposal unless secondary treatment quality is required. For design purposes, restaurant wastewater will be assumed to have a BOD_5 of at least 1,200 mg/l after exiting the grease trap or grease interceptor.

Actual water usage data or other methods of calculating wastewater usage rates may be used by the system designer if it is accurate and acceptable to the Texas Commission on Environmental Quality or its authorized agents. If actual water use records are greater than the usage rates in this table, the system shall be designed for the higher flow.

TYPE OF FACILITY	USAGE RATE GALLONS/DAY (Without Water Saving Devices)	USAGE RATE GALLONS/DAY (With Water Saving Devices)
Single family dwelling (one or two bedrooms) - less than 1,500 square feet.	225	180
Single family dwelling (three bedrooms) - less than 2,500 square feet.	300	240
Single family dwelling (four bedrooms) - less than 3,500 square feet.	375	300
Single family dwelling (five bedrooms) - less than 4,500 square feet.	450	360
Single family dwelling (six bedrooms) - less than 5,500 square feet.	525	420
Greater than 5,500 square feet, each additional 1,500 square feet or increment thereof.	75	60
Condominium or Townhouse (one or two bedrooms)	225	180
Condominium or Townhouse (each additional bedroom)	75	60
Mobile home (one or two bedrooms)	225	180
Mobile home (each additional bedroom)	75	60
Country Clubs (per member)	25	20
Apartment houses (per bedroom)	125	100
Boarding schools (per room capacity)	50	40
Day care centers (per child with kitchen)	25	20
Day care centers (per child without kitchen)	15	12
Factories (per person per shift)	15	12
Hospitals (per bed)	200	160
Hotels and motels (per bed)	75	60
Nursing homes (per bed)	100	80
Laundries (self service per machine)	250	200
Lounges (bar and tables per person)	10	8
Movie Theaters (per seat)	5	4

Office buildings (no food or showers per occupant) Office buildings (with food service per occupant)	5 10	4 8
Parks (with bathhouse per person) Parks (without bathhouse per person)	15 10	12 8
Restaurants - minimum effluent BOD5 quality described above this table Restaurants (per seat) Restaurants (fast food per seat)	 35 15	 28 12
Schools (with food service & gym per student) Schools (without food service)	25 15	20 12
Service stations (per vehicle)	10	8
Stores (per washroom)	200	160
Swimming pool bathhouses (per person)	10	8
Travel trailer/RV parks (per space)	50	40
Vet clinics (per animal)	10	8
Construction sites (per worker)	50	40
Youth camps (per camper)	30	24

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

	TO					
FROM	Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10

Wells Completed in accordance with 16 TAC §76.1000(a)(1)	50	50	50	20	50	50
Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only); Retention Ponds/Basin (Spillway elevation)	50	75 LPD with secondary treatment & disinfection - 50	50	20	50	25 when $R_a < 0.1$ 75 when $R_a > 0.1$ (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Swimming Pools, and Other	5	5	5	5 Pipe may run beneath driveways and sidewalks or up to surface improvements if sleeved in	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5

Structures				Schedule 40 pipe Pipe containing secondary effluent has no setbacks from building foundations		
Underground Easements	1	1	1	1	May spray to edge of easement, but not into. Sprinkler heads must be 1 feet from easement edge	1
Overhead Easements	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder

Slopes Where Seeps may Occur, drainage easements and detention ponds	5	25	5	10	10	10 when $R_a < 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of this title relating to Edwards Aquifer)[3]	50	150	50	50	150	100 when $R_a < 0.1$ 150 when $R_a > 0.1$

1. All distances measured in feet, unless otherwise indicated.
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water).
3. No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title (relating to Public Drinking Water).
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by commercial timer. See §285.33(d)(2)(G)(i).

Figure: 30 TAC §285.91(12)

Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.

SYSTEM DESCRIPTION	Maintenance /Affidavit Required	Maintenance Activities Required	Testing and Reporting Requirements [2,4]
Septic Tank & Absorptive Drainfield	No	See §285.39	No
Septic Tank & ET Drainfield (Unlined)	No (3)	See §285.39	No
Septic Tank & ET Drainfield (Lined)	No (3)	See §285.39	No
Septic Tank & Pumped Drainfield	No	See §285.39	No
Septic Tank & Leaching Chamber	No	See §285.39	No
Septic Tank & Gravelless Pipe	No	See §285.39	No
Septic Tank & Low Pressure Dosing	No	See §285.39	No
Septic Tank & Absorptive Mounds	No	See §285.39	No
Septic Tank & Soil Substitution	No	See §285.39	No
Septic Tank, Secondary Treatment, Filter & Surface Application	Yes	Entire OSSF	Test & Report
Secondary Treatment & Standard Absorptive Drainfields	Yes	Treatment System	Report
Secondary Treatment & ET Drainfield	Yes	Treatment System	Report
Secondary Treatment & Leaching Chamber	Yes	Treatment System	Report
Secondary Treatment & Gravelless Pipe	Yes	Treatment System	Report
Secondary Treatment, Filter & Drip Emitter	Yes	Entire OSSF	Report
Secondary Treatment & Low Pressure Dosing	Yes	Treatment System	Report
Secondary Treatment & Absorptive Mounds	Yes	Treatment System	Report
Secondary Treatment & Surface Application	Yes	Entire OSSF	Test and Report
Any Other Treatment System	(1)	(1)	(1)
Any Other Subsurface Disposal System	(1)	(1)	(1)
Any Other Surface Disposal System	Yes	(1)	(1)
Non-Standard Treatment and Surface Application	Yes	Entire OSSF	Test and Report (1)
Holding Tank	Yes	Pump tank as needed	Keep pump records

(1) Determined by the permitting authority based upon review required by §285.5(b) of this title (relating to Submittal Requirements for Planning Materials).
(2) Requirements for Planning Materials. Testing criteria and reporting frequency for those systems not covered under (1) shall be according to §285.91(4) of this title.
(3) Required if design Q is less than required by §285.91(3) of this title.
(4) Not required if the homeowner maintains the system.

Figure: 30 TAC §336.210(e)

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228 (89)	0.001	4,000	In-114m (49)	0.01	1,000	Xe-133 (54)	1.0	900,000
Am-241 (95)	0.001	2	Ir-192 (77)	0.001	40,000	Y-91 (39)	0.01	2,000
Am-242 (95)	0.001	2	Fe-55 (26)	0.01	40,000	Zn-65 (30)	0.01	5,000
Am-243 (95)	0.001	2	Fe-59 (26)	0.01	7,000	Zr-93 (40)	0.01	400
Sb-124 (51)	0.01	4,000	Kr-85 (36)	1.0	6,000,000	Zr-95 (40)	0.01	5,000
Sb-126 (51)	0.01	6,000	Pb-210 (82)	0.01	8	Any other ß-emitter	0.01	10,000
Ba-133 (56)	0.01	10,000	Mn-56 (25)	0.01	60,000			
Ba-140 (56)	0.01	30,000	Hg-203 (80)	0.01	10,000	Mixed fission products	0.01	1,000
Bi-207 (83)	0.01	5,000	Mo-99 (42)	0.01	30,000			
Bi-210 (83)	0.01	600	Np-237 (93)	0.001	2	Mixed corrosion products	0.01	10,000
Cd-109 (48)	0.01	1,000	Ni-63 (28)	0.01	20,000			
Cd-113 (48)	0.01	80	Nb-94 (41)	0.01	300			
Ca-45 (20)	0.01	20,000	P-32 (15)	0.5	100	Contaminated equipment, ß-	0.001	10,000
Cf-252 (98)	0.001	9(20mg)	P-33 (15)	0.5	1,000			
C-14 (6)**	0.01	50,000	Po-210 (84)	0.01	10			
Ce-141 (58)	0.01	10,000	K-42 (19)	0.01	9,000	Irradiated material, any form other than solid non-combustible	0.01	1,000
Ce-144 (58)	0.01	300	Pm-145 (61)	0.01	4,000			
Cs-134 (55)	0.01	2,000	Pm-147 (61)	0.01	4,000			
Cs-137 (55)	0.01	2,000	Ru-106 (44)	0.01	200			
Cl-36 (17)	0.5	100	Sm-151 (62)	0.01	4,000			
Cr-51 (24)	0.01	300,000	Sc-46 (21)	0.01	3,000			
Co-60 (27)	0.001	5,000	Se-75 (34)	0.01	10,000	Irradiated material, solid non-combustible	0.001	10,000
Cu-64 (29)	0.01	200,000	Ag110m (47)	0.01	1,000			
Cm-242 (96)	0.001	60	Na-22 (11)	0.01	9,000			
Cm-243 (96)	0.001	3	Na-24 (11)	0.01	10,000			
Cm-244 (96)	0.001	4	Sr-89 (38)	0.01	3,000	Mixed radioactive waste, ß-	0.01	1,000
Cm-245 (96)	0.001	2	Sr-90 (38)	0.01	90			
Eu-152 (63)	0.01	500	Sr-35 (16)	0.5	900			
Eu-154 (63)	0.01	400	Tc-99 (43)	0.01	10,000	Packaged waste, ß-***	0.001	10,000
Eu-155 (63)	0.01	3,000	Tc-99m (43)	0.01	400,000			
Ge-68 (32)	0.01	2,000	Te-127m(52)	0.01	5,000			
Gd-153 (64)	0.01	5,000	Te-129m(52)	0.01	5,000	Any other oe Emitter	0.001	2
Au-198 (79)	0.01	30,000	Tb-160 (65)	0.01	4,000			
Hf-172 (72)	0.01	400	Tm-170 (69)	0.01	4,000	Contaminated equipment oe	0.0001	20
Hf-181 (72)	0.01	7,000	Sn-113 (50)	0.01	10,000			
Ho-166 (67)	0.01	100	Sn-123 (50)	0.01	3,000	Packaged waste***	0.0001	20
H-3 (1)	0.5	20,000	Sn-126 (50)	0.01	1,000			
I-125 (53)	0.5	10	Ti-144 (22)	0.01	100			
I-131 (53)	0.5	10	V-48 (23)	0.01	7,000			

* For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. ( ) indicates atomic number.

** Non CO forms only.

*** Waste packaged in Type B containers does not require an emergency plan.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Completion of Mexican Fruit Fly Eradication in Willacy County

In the January 29, 2008 issue of the *Federal Register*, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture published an Interim Rule, which removed Willacy County from the list of counties quarantined for the Mexican fruit fly. However, a trapping survey is required to demonstrate absence of the flies to maintain the fly-free status of a county. During such a survey, Mexican fruit flies were detected beginning February 28, 2008, and reached the quarantined trigger level on March 14, 2008. Consequently, on March 26, 2008, the Texas Department of Agriculture (the department) adopted on an emergency basis a Mexican fruit fly quarantine to prevent spread of this pest into other areas of Texas and to facilitate eradication. That quarantine was published as 4 Texas Administrative Code §§19.500 - 19.508, in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2877). However, on April 4, 2008, the department withdrew this quarantine and readopted the emergency quarantine with enhanced quarantine boundary resulting from additional detections of the Mexican fruit flies in Willacy County. The withdrawal and emergency rules were published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3257 and 3090). On July 10, 2008, the department renewed the effectiveness of the emergency adoption of §§19.500 - 19.508, for a 60-day period. That notification, which was published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5829), made the quarantine effective until September 21, 2008.

As of August 20, 2008, no additional Mexican fruit flies were detected for a time period equal to three consecutive generations of this pest after the most recent detection on May 9, 2008. Consequently, the Mexican fruit fly eradication criterion established in §19.501 of the Mexican fruit fly quarantine has been met and the department has lifted the quarantine from that part of Willacy County described in §19.502(a)(2) of the quarantine as a quarantined infested area. Furthermore, the department does not intend to adopt this quarantine on a permanent basis. For more information, please call Dr. Shashank Nilakhe, State Entomologist, at (512) 463-1145.

TRD-200804676
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 27, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 15, 2008, through August 21, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 27, 2008. The public comment period for this project will close at 5:00 p.m. on September 26, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Renew Blue, Inc.; Location: The project is located in the Gulf of Mexico, at the terminus of East Beach Drive, in Surfside Beach, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 278374; Northing: 3205525. Project Description: The applicant proposes to install 18 SEADOG pumps in approximately 24 foot deep water. Two 8 inch and one 4 inch waterlines will run from the pumps to an onshore facility in Surfside Beach. The onshore facility will include a 4,000 to 6,000 square foot, single story, commercial building with adjacent parking. In addition, a 60 to 75 foot-tall, 30,000 gallon water tower with a 500 square foot turbine building and two 25 foot by 25 foot fresh water outflow and brine research ponds below the tower will be constructed. Both ponds will be glass and wood enclosed structures similar to an indoor swimming pool. Waste water and brine will either be offered for use to a regional business that may have use for it or it will be discharged back into the Gulf of Mexico per applicable regulations. CCC Project No.: 08-0199-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00424 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Denbury Green Pipeline-Texas, LLC/ Denbury Onshore, LLC; Location: The project is located from Highway 109 in Calcasieu Parish, Louisiana, to the Hastings Oil and Gas field near Alvin, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Echo, Louisiana and Mauriceville, Orangefield, Terry, Beaumont East, Port Acres, Fannett East, Alligator Hole Marsh, Hamshire, Stowell, Stanolind Reservoir, Oyster Bayou, Lake Stephenson, Smith Point, Port Bolivar, Texas City, Dickenson, Algoa, and Manvel, Texas. Approximate UTM Coordinates in NAD 83 (feet): Start: Zone 15; Easting: 440411; Northing: 3672757; End: Zone 15; Easting 280269; Northing 3264611. Project Description: The applicant proposes to install and maintain a 24 inch carbon dioxide pipeline approximately 124 miles in length from Highway 109 in Calcasieu Parish, Louisiana, to Alvin, Texas, through a series of various methods to include conventional trenching, borings, and horizontal directional drills. The pipeline corridor will be restored to pre-construction contours. The proposed pipeline will impact approximately 7.01 acres of oyster reef within Galveston Bay and convert 86.05 acres of forested wetlands to herbaceous wetlands. CCC Project No.: 08-0210-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01963 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water

Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Yuma Exploration and Production Company; Location: The project is located in Galveston and Trinity Bays, in State Tracts (ST) 200, 136, 109, and 108, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 325366.53; Northing: 3270715.42. Project Description: The applicant proposes to drill ST 200 Well No. 1, ST 108 Well No. 1, and ST 108 Well No 2, lay two pipelines by jetting and/or trenching, and install well and production platforms. Approximately 7,100 cubic yards of material would be displaced during pipeline construction and approximately 1,267 cubic yards of rock or crushed concrete may be placed under the drilling rig at each proposed well site for stabilization. CCC Project No.: 08-0222-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00764 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200804621
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 26, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/01/08 - 09/07/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/01/08 - 09/07/08 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 08/01/08 - 08/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 08/01/08 - 08/31/08 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/08 - 12/31/08 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009 [1] for the period of 10/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code[1] for the period of 10/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 [4] for the period of 10/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/08 - 12/31/08 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 10/01/08 - 12/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/08 - 09/30/08 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/08 - 09/30/08 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200804622
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 26, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 6, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the

commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 6, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AVALON GOLDEN JUBLIEE, INC. dba Friendswood Chevron; DOCKET NUMBER: 2008-0823-PST-E; IDENTIFIER: RN101619773; LOCATION: Webster, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.246(4) and (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; and 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; PENALTY: $4,418; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2007-1919-IHW-E; IDENTIFIER: RN102535077 and RN104085691; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §335.2(b) and §335.431(c)(1), 40 Code of Federal Regulations (CFR) §268.9(c) and §268.40(e), and Permit Number HW-50255, Section II.A.7., by failing to prevent the unauthorized land disposal of characteristically hazardous waste; 30 TAC §335.431(c)(1), 40 CFR §268.7(a)(2), and Permit Number HW-50255, Section II.A.7., by failing to provide land disposal restriction notices to the land treatment facility and landfill along with the initial shipments of hazardous amine reclaimer bottoms; 30 TAC §335.6(c) and Permit Number HW-50255, Section II.C.1.h., by failing to maintain an up-to-date notice of registration; 30 TAC §335.9(a)(2) and Permit Number HW-50255, Section II.C.1.h., by failing to submit a complete and correct annual waste summary; 30 TAC §335.10(c), 40 CFR §262.20(a)(1), and Permit Number HW-50255, Section II.C.1.h., by failing to correctly complete uniform hazardous waste manifests; 30 TAC §335.62 and §335.504 and 40 CFR §262.11, by failing to make a complete and correct hazardous waste determination; 30 TAC §§305.125(1), 335.2(a), and 335.431(c)(1), 40 CFR §268.9(c) and §268.40(e), and Permit Number HW-50183, Section II.A.2., and IV.B.1., by failing to prevent the land disposal of characteristically hazardous waste not meeting applicable treatment standards and by failing to comply with permit conditions; 30 TAC §305.125(1) and (9) and Permit Number HW-50183, Section II.A.2. and II.B.4., by failing to report to the TCEQ in a timely manner the land disposal of hazardous waste; 30 TAC §21.4 and the Code, §5.702, by failing to pay consolidated water quality fees; PENALTY: $650,000; Supplemental Environmental Project (SEP) offset amount of $325,000 applied to purchasing a minimum of 50 acres of contiguous property in and around Texas City; address any contamination on the property to levels applicable for park land; and preserve the entire property in perpetuity as a park and nature preserve through the use of a conservation easement; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BUCKY'S NAVIGATION, INC. dba Corpus Christi Truck Stop; DOCKET NUMBER: 2008-0545-PST-E; IDENTIFIER: RN103141982; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: truck stop with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(A)(ii)(I) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks (USTs); 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs; and 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; PENALTY: $12,315; ENFORCEMENT COORDINATOR: Elvia Maske (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Camp Champions Texas L.P.; DOCKET NUMBER: 2008-0519-PWS-E; IDENTIFIER: RN101258275; LOCATION: Burnet County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure sanitary control easements; PENALTY: $105; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: CAMPBELL OIL COMPANY dba Shop & Go Number 5; DOCKET NUMBER: 2008-0609-PST-E; IDENTIFIER: RN102440757; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II equipment in proper operating condition; 30 TAC §115.242(8) and THSC, §382.085(b), by failing to secure the Stage II equipment in a manner to prevent tampering; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or addition; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: $6,101; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Chesapeake Energy Marketing, Inc.; DOCKET NUMBER: 2008-0876-WR-E; IDENTIFIER: RN105524508; LOCATION: Johnson County; TYPE OF FACILITY: oil and gas drilling site; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a temporary water rights permit; PENALTY: $1,711; ENFORCEMENT COORDINATOR: Harvey Wilson, (512)

239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Copano Processing, L.P.; DOCKET NUMBER: 2008-0911-AIR-E; IDENTIFIER: RN101271419; LOCATION: Sheridan, Colorado County; TYPE OF FACILITY: natural gas processing, dehydration, and fractionation plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O-00807, General Terms and Conditions, General Operating Permit Number O-00871, Site-wide requirements (b)(2), and THSC, §382.085(b), by failing to submit a semi-deviation report; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2008-0497-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 676A, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to comply with the emission limit for sulfur dioxide; PENALTY: $7,950; SEP offset amount of $3,180 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(9) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2008-0641-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 18287, SC Number 1, THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit the final report; PENALTY: $20,695; SEP offset amount of $8,278 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Fleetwood Travel Trailers of Texas, Inc.; DOCKET NUMBER: 2008-0858-AIR-E; IDENTIFIER: RN102306180; LOCATION: Longview, Gregg County; TYPE OF FACILITY: manufacturing plant for the production of towable trailers, 'fifth wheels', and 'slide-in' truck campers; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B) and (C), and 122.146(1) and (2), FOP Number O-02598, and THSC, §382.085(b), by failing to timely complete and submit three annual permit compliance certifications; PENALTY: $4,100; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: GASGO MARKETS, INC. dba Gasgo Markets 12; DOCKET NUMBER: 2008-1004-PST-E; IDENTIFIER: RN101777472; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b) and §334.49(e)(2), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: City of Italy; DOCKET NUMBER: 2008-0127-MWD-E; IDENTIFIER: RN102336310; LOCATION: Ellis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014195001, Interim II Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, total suspended solids, ammonia nitrogen, flow, chlorine, and five-day carbonaceous biochemical oxygen demand; 30 TAC §305.125(17) and TPDES Permit Number WQ0014195001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014195001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $86,100; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: M-I, L.L.C. dba M-I SWACO; DOCKET NUMBER: 2008-0707-AIR-E; IDENTIFIER: RN102577384; LOCATION: Odessa, Ector County; TYPE OF FACILITY: oil field equipment painting plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to painting oil field equipment in a partially enclosed paint booth, conducting outdoor spray painting, and conducting outdoor sandblasting; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(14) COMPANY: Robert Rotter; DOCKET NUMBER: 2008-0400-EAQ-E; IDENTIFIER: RN104945217; LOCATION: Hays County; TYPE OF FACILITY: commercial parking area; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan; PENALTY: $13,260; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(15) COMPANY: Shell Oil Company and Shell Chemical LP; DOCKET NUMBER: 2008-0635-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery and chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a) and (c)(7), New Source Review (NSR) Permit Number 21262/PSD-TX-928, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(f) and THSC, §382.085(b), by failing to provide information within 14 days of the additional information request; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 3173, SC 1, FOP Number O-01948, Special Terms and Conditions (STC) 13.A., and THSC, §382.085(b), by failing to maintain the volatile organic compound (VOC) maximum allowable emission rate of 0.52 pounds per hour; and 30 TAC §101.20(3) and §116.715(a) and (c)(7), NSR Permit Number 21262/PSD-TX-928, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $43,970; SEP offset amount of $21,985 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Sherman Dry Clean City Inc. dba Dry Clean City; DOCKET NUMBER: 2008-0387-DCL-E; IDENTIFIER: RN103952909; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to obtain a registration by completing and submitting the required registration form; 30 TAC §337.20(e)(5)(A),

by failing to keep the secondary containment area free of all materials or objects that would diminish its capacity to contain a leak, spill, or release; and 30 TAC §§337.20(e)(6)(B), 337.70(a), and 337.72(3), by failing to maintain inspection records of the secondary containment system; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Keith Sherrell; DOCKET NUMBER: 2008-0737-LII-E; IDENTIFIER: RN105457857; LOCATION: Granbury, Hood County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4, Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $742; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Texas Port Recycling LP; DOCKET NUMBER: 2008-0465-AIR-E; IDENTIFIER: RN101474955; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal recycling plant; RULE VIOLATED: 30 TAC §§106.4(c), 106.261(a)(2), 106.262(a)(2), and 116.110(a)(4) and THSC, §382.085(b), by failing to prevent unauthorized VOC emissions and meet the general requirements for permitting by rule; and 30 TAC §101.201(b)(2)(G) and (H) and THSC, §382.085(b), by failing to include the type of contaminant released and the estimated total quantity released in the final record for each event; PENALTY: $61,500; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Willie Garza dba The Man Shop Cleaners & Tuxedo Rental; DOCKET NUMBER: 2008-0393-MLM-E; IDENTIFIER: RN105426829; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: dry cleaning and tuxedo rental; RULE VIOLATED: 30 TAC §337.10(a)(1) and §337.14(a), by failing to obtain a registration by completing and submitting the required registration form; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area; and 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct proper hazardous waste determinations; PENALTY: $8,020; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1234-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $181,200; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200804617
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2008

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Enforcement Orders

An agreed order was entered regarding K & M Michael, Inc. dba Kilgore Food and More, Docket No. 2005-0343-PST-E on August 20, 2008 assessing $16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jarrod Meyer, Docket No. 2005-1928-LII-E on August 20, 2008 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding B & F and Sons, LLC dba B & F Exxon, Docket No. 2005-1945-PST-E on August 20, 2008 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Herndon Marine Products, Inc., Docket No. 2006-0657-PST-E on August 20, 2008 assessing $5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Anna Enterprises Inc. dba Charlies Food Mart 2, Docket No. 2006-1099-PST-E on August 20, 2008 assessing $8,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tidwell Super Cleaners, Inc., Docket No. 2006-1123-DCL-E on August 20, 2008 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andres E. Pascual dba DCSC Market and dba 125 Clean Super Center, Docket No. 2006-1290-DCL-E on August 20, 2008 assessing $1,778 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hyeshin Han Bouwhuis dba Uptown Cleaners, Docket No. 2006-1382-DCL-E on August 20, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mannesmann DMV Stainless USA, Inc. fka DMV Stainless USA, Inc., Docket No. 2006-1577-AIR-E on August 20, 2008 assessing $3,225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Martin Adelakun dba National Mini Mart, Docket No. 2006-1789-PST-E on August 20, 2008 assessing $24,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kenedy, Docket No. 2007-0154-MWD-E on August 20, 2008 assessing $29,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pak-Baderia Enterprises, Inc. dba M & M Superette, Docket No. 2007-0212-PST-E on August 20, 2008 assessing $4,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Lantz Oneill dba Frontier Park Resort and Marina, Docket No. 2007-0449-MLM-E on August 20, 2008 assessing $48,535 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horizon Dairy, Docket No. 2007-0850-AGR-E on August 20, 2008 assessing $2,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-00107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dornal L. Foust, Docket No. 2007-1559-LII-E on August 20, 2008 assessing $131 in administrative penalties with $26 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Munday, Docket No. 2007-1582-MWD-E on August 20, 2008 assessing $44,400 in administrative penalties with $8,880 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paintbrush 290 GP, LLC, Docket No. 2007-1720-EAQ-E on August 20, 2008 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2007-1755-PWS-E on August 20, 2008 assessing $5,342 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2007-1776-WQ-E on August 20, 2008 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Azle, Docket No. 2007-1798-MLM-E on August 20, 2008 assessing $25,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale Gold dba Gold Egg Farm, Docket No. 2007-1891-AGR-E on August 20, 2008 assessing $1,050 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Neal's Lodges, Inc., Docket No. 2007-1905-MLM-E on August 20, 2008 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC, Docket No. 2007-1957-AIR-E on August 20, 2008 assessing $20,230 in administrative penalties with $4,046 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2007-1984-MWD-E on August 20, 2008 assessing $7,250 in administrative penalties with $1,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luz Diaz dba Chula Vista Grocery Docket No. 2007-1990-PST-E on August 20, 2008 assessing $10,500 in administrative penalties with $3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Environmental Processing Systems, L.C., Docket No. 2007-2015-UIC-E on August 20, 2008 assessing $51,850 in administrative penalties with $10,370 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bells, Docket No. 2007-2032-MWD-E on August 20, 2008 assessing $13,750 in administrative penalties with $2,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McMullen County Water Control and Improvement District No. 1, Docket No. 2007-2037-MLM-E on August 20, 2008 assessing $3,687 in administrative penalties with $737 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Value Family Homes-Denton, L.P. dba Denton Mobile Home Community, Docket No. 2007-2043-WQ-E on August 20, 2008 assessing $4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2007-2044-AIR-E on August 20, 2008 assessing $30,625 in administrative penalties with $6,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Copano Processing, L.P., Docket No. 2008-0010-AIR-E on August 20, 2008 assessing $20,850 in administrative penalties with $4,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC, Docket No. 2008-0024-AIR-E on August 20, 2008 assessing $24,860 in administrative penalties with $4,972 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River Redevelopment Authority, Docket No. 2008-0067-IWD-E on August 20, 2008 assessing $11,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KOODALOOR CORPORATION, Docket No. 2008-0075-PST-E on August 20, 2008 assessing $9,650 in administrative penalties with $1,930 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carr Land Development LLC, Docket No. 2008-0108-WR-E on August 20, 2008 assessing $1,575 in administrative penalties with $315 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nitrous Express, Inc. dba Rorabaugh Mechanical Company, Docket No. 2008-0114-PST-E on August 20, 2008 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crowell, Docket No. 2008-0116-MWD-E on August 20, 2008 assessing $14,000 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kempner Water Supply Corporation, Docket No. 2008-0128-PWS-E on August 20, 2008 assessing $1,523 in administrative penalties with $304 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas H2O, Inc., Docket No. 2008-0129-WQ-E on August 20, 2008 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nasa Oil, Inc. dba Nasa Food Mart, Docket No. 2008-0134-PST-E on August 20, 2008 assessing $2,650 in administrative penalties with $530 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilgrims Pride Corporation, Docket No. 2008-0144-IHW-E on August 20, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Godley, Docket No. 2008-0158-MWD-E on August 20, 2008 assessing $7,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John M. Graul, Docket No. 2008-0183-WQ-E on August 20, 2008 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oceaneering International, Inc., Docket No. 2008-0204-MWD-E on August 20, 2008 assessing $5,760 in administrative penalties with $1,152 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Composite Materials, LLC, Docket No. 2008-0214-AIR-E on August 20, 2008 assessing $16,600 in administrative penalties with $3,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Technologies Inc., Docket No. 2008-0217-AIR-E on August 20, 2008 assessing $3,562 in administrative penalties with $712 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Star Concrete, Inc., Docket No. 2008-0239-AIR-E on August 20, 2008 assessing $1,045 in administrative penalties with $209 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mario Hernandez dba KK Busters Plumbing, Docket No. 2008-0263-MLM-E on August 20, 2008 assessing $2,800 in administrative penalties with $560 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston County Water Control and Improvement District No. 1, Docket No. 2008-0264-PWS-E on August 20, 2008 assessing $2,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grady Harris dba Lakehurst Meadows, Docket No. 2008-0274-WQ-E on August 20, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buchanan Lake Village, Inc., Docket No. 2008-0285-PWS-E on August 20, 2008 assessing $630 in administrative penalties with $126 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2008-0303-AIR-E on August 20, 2008 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roscoe, Docket No. 2008-0308-PWS-E on August 20, 2008 assessing $770 in administrative penalties with $154 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alvin Chemical, Inc., Docket No. 2008-0311-AIR-E on August 20, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quala Systems, Inc., Docket No. 2008-0319-AIR-E on August 20, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Espinosa, Docket No. 2008-0340-OSS-E on August 20, 2008 assessing $131 in administrative penalties with $26 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tony Rhett Dickey, Docket No. 2008-0378-AIR-E on August 20, 2008 assessing $1,482 in administrative penalties with $296 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. Griffin, Docket No. 2008-0383-PST-E on August 20, 2008 assessing $350 in administrative penalties with $70 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend County Municipal Utility District No. 130, Docket No. 2008-0411-MWD-E on August 20, 2008 assessing $4,170 in administrative penalties with $834 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2008-0414-AIR-E on August 20, 2008 assessing $8,450 in administrative penalties with $1,690 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVIS AND WARDLAW OIL CO., INC., Docket No. 2008-0424-PST-E on August 20, 2008 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Royce Homes, L.P., Docket No. 2008-0460-WQ-E on August 20, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brazos Country, Docket No. 2008-0462-MLM-E on August 20, 2008 assessing $272 in administrative penalties with $53 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ray French Land Company, Ltd., Docket No. 2008-0487-WQ-E on August 20, 2008 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weatherford, Docket No. 2008-0490-AIR-E on August 20, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OK Concrete Company, Docket No. 2008-0585-WQ-E on August 20, 2008 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding SB All Seasons, Inc., Docket No. 2008-0085-PST-E on August 20, 2008 assessing $4,375 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding River Oaks Country Club, Docket No. 2008-0040-PST-E on August 20, 2008 assessing $4,375 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Parbadeep Singh dba Lake Stop Store, Docket No. 2008-0170-PST-E on August 20, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kash-N-Karry, Inc. dba Magic Texaco, Docket No. 2008-0084-PST-E on August 20, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Joshua Investments, LLC dba Regalado Exxon, Docket No. 2008-0028-PST-E on August 20, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding USA IDOL, Inc. dba Stop & Go 6, Docket No. 2008-0248-PST-E on August 20, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Aradhana Texas, Inc. dba Mr. Convenience, Docket No. 2008-0082-PST-E on August 20, 2008 assessing $3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding 16303 Food Store Associates, Inc. dba Sunrise Super Stop 15, Docket No. 2008-0029-PST-E on August 20, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Raymond Allen, Docket No. 2008-0185-WOC-E on August 20, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ruben Gutierrez, Docket No. 2008-0118-WOC-E on August 20, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tim M. Swanson, Docket No. 2008-0086-WOC-E on August 20, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Raymond Allen, Docket No. 2008-0185-WOC-E on August 20, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tony Parrish, Docket No. 2008-0031-WOC-E on August 20, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Clearstream Wastewater Systems, Inc., Docket No. 2008-0087-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dewberry Investments, Ltd. dba Dewberry Investments Monterrey Hills, Docket No. 2008-0186-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Babin Machine Works, Inc., Docket No. 2008-0348-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Nabors Well Services, Ltd., Docket No. 2008-0030-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding The Aermotor Company, Docket No. 2008-0168-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Somerset Custom Homes, Ltd., Docket No. 2007-2008-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Smart Materials, Inc. dba Baytown Sand Pit, Docket No. 2008-0081-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding R.E.E. Holding, Inc. dba Tool Tech, Docket No. 2008-0323-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Option 1 Realty Group, LP dba Farmers Row Development, Docket No. 2008-0026-WQ-E on August 20, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Adexco Operating Company, Docket No. 2008-0119-WR-E on August 20, 2008 assessing $350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200804660
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2008

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 37, 39, 55, 305, 331, and 336

The Texas Commission on Environmental Quality (commission or TCEQ) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 37, Financial Assurance; Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 305, Consolidated Permits; Chapter 331, Underground Injection Control; and Chapter 336, Radioactive Substance Rules under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The rulemaking would implement Senate Bill (SB) 1604, 80th Legislature, 2007, Regular Session, House Bill 3838, 80th Legislature, 2007, Regular Session, and House Bill 1567, 78th Legislature, 2003, relating to radioactive material licensing, including uranium mining. SB 1604 also addresses the TCEQ's underground injection control program for regulation of in situ uranium mining and requires the TCEQ to establish and administer a new state fee for the disposal of radioactive wastes other than low-level radioactive waste. In addition, the rulemaking would establish the remaining technical requirements, application processing requirements, public notice requirements, licensing and application fees, low-level radioactive waste disposal fees, and financial assurance requirements for radioactive material licensing, including those programs transferred from the Department of State Health Services to the TCEQ.

A public hearing on this proposal will be held in Austin, Texas, on September 16, 2008, at 10:00 a.m., in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing with special communication or other accommodation needs should contact Patricia Duron, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Duron, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments being submitted via the eComments system. The comment period closes October 6, 2008. All comments should reference Rule Project Number 2007-029-336-PR. The proposed revisions may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information or questions concerning this proposal, please contact Susan Jablonski, P.E., Radioactive Materials Division, at (512) 239-6731.

TRD-200804549
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 22, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 6, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 6, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: A.Z.H.E. Corporation dba Forest Conoco; DOCKET NUMBER: 2006-1710-PST-E; TCEQ ID NUMBER: RN102037157; LOCATION: 2103 West 43rd Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs) involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified

by the manufacturer or any applicable California Air Resources Board (CARB) Executive Order(s), and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system; PENALTY: $3,150; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Mohamed Ahmed Al Bataineh dba Harvest Food Store; DOCKET NUMBER: 2005-1241-PST-E; TCEQ ID NUMBER: RN100925064; LOCATION: 4626 Yale Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST registration late fees for TCEQ Financial Administration Account Number 0057887U; PENALTY: $1,050; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Orange County Development Co.; DOCKET NUMBER: 2007-1073-PST-E; TCEQ ID NUMBER: RN105209035; LOCATION: 2508 MacArthur Drive, Orange, Orange County, Texas; TYPE OF FACILITY: property which contained inactive USTs; RULES VIOLATED: 30 TAC §334.6, by failing to submit a construction notification form to the TCEQ 30 days prior to the tank removal or failed to request a 30-day construction waiver prior to initiating tank removal activity; 30 TAC §334.7, by failing to register the USTs in existence on or after September 1, 1987 with the commission; 30 TAC §334.78, by failing to submit a site assessment and a release determination report to the agency for a leaking UST within 45 days after the removal of the three USTs; 30 TAC §334.75(b), by failing to contain and immediately clean up a spill or overfill of any petroleum substance from an UST; and 30 TAC §§334.55(a)(3), (b)(4)(E) and (5)(C)(ii), by failing to ensure that the UST removal is conducted by qualified personnel possessing the appropriate skills, experience, and competence; PENALTY: $6,500; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Vashu Samtani dba Countryside; DOCKET NUMBER: 2005-1523-PST-E; TCEQ ID NUMBER: RN101434579; LOCATION: 13174 State Highway 198 in Mabank, Van Zandt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and (ii), and (d)(1)(B)(ii), and TWC, §26.3475(a), by failing to perform and annual performance test on the existing line leak detectors, failed to test the piping once per year by means of a piping tightness test or by monitoring the piping for releases at least once every month (not to exceed 35 days between each monitoring) and failed to reconcile inventory control records monthly in a manner sufficiently accurate to detect a release which equals or exceeds the sum of one percent of flow-through plus 130 gallons; 30 TAC §334.48(c), by failing to conduct proper inventory control procedures; and 30 TAC §334.45(c)(3)(A), by failing to ensure that each Underwriters Laboratories-listed emergency shutoff valve was securely anchored to the base of each dispenser; PENALTY: $7,650; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200804634
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 6, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 6, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision; DOCKET NUMBER: 2008-0136-PWS-E; TCEQ ID NUMBERS: RN101250306 and RN100825082; LOCATION: County Road 214, 3.3 miles north of Highway 29, north of Liberty Hill, Williamson County, Texas, (San Gabriel Facility) and north of Farm-to-Market Road 1431, 3.7 miles west of United States Highway 183, Travis County, Texas (Indian Springs Facility); TYPE OF FACILITY: two public water systems; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to compile and maintain, at the San Gabriel Facility, an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.110(e)(4), by failing to prepare and submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the commission each quarter by the tenth day of the month following the end of each quarter for 2007 for the San Gabriel Facility; 30 TAC §290.46(m)(1)(A), by failing to conduct

an annual inspection of the water system's ground storage tank at the San Gabriel Facility; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water system's pressure tank at the San Gabriel Facility; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements that cover the land within 150 feet of the water system's two wells at the San Gabriel Facility; 30 TAC §290.42(1), by failing to compile and maintain a plant operations manual for operator review and reference at the San Gabriel Facility; 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection at each pump station or pressure plane at the San Gabriel Facility; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet in all directions from the well casing at the San Gabriel Facility; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 0.6 gpm per connection at the San Gabriel Facility; 30 TAC §290.46(s)(1), by failing to calibrate the water system's two well meters once every three years at the San Gabriel Facility; 30 TAC §290.51(a)(3), by failing to pay for the San Gabriel Facility all annual and late Public Health Service (PHS) fees for TCEQ Financial Administration Account Number 92460046 for Fiscal Years 2001 - 2008; 30 TAC §290.51(a)(3), by failing to pay for the Indian Springs Facility all annual and late PHS fees for TCEQ Financial Administration Account Number 92270210 for Fiscal Years 2001 - 2008; and 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan at the Indian Springs Facility; PENALTY: $2,375; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Joey Nguyen dba Stop & Shop; DOCKET NUMBER: 2005-1128-PST-E; TCEQ ID NUMBER: RN102060803; LOCATION: 5037 Wilbarger Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), (4) and (6) and THSC, §382.085(b), by failing to maintain for review a copy of the Station's California Air Resources Board (CARB) Executive Order, Stage II facility maintenance records, Stage II employee training records, and record of daily inspections conducted at the station; 30 TAC §115.242(3)(A) and (8) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s) and free of defects that would impair the effectiveness of the system, and failing to prevent the tampering with the Stage II vapor recovery; 30 TAC §115.222(1) and THSC, §382.085(b), by failing to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months had not been conducted. Also the vapor space manifold and the dynamic back pressure tests had not been conducted at least once every 36 months; PENALTY: $5,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Royce Richardson; DOCKET NUMBER: 2006-1961-MSW-E; TCEQ ID NUMBER: RN104807359; LOCATION: Interstate Highway 35 near mile marker 319, near Bruceville, McLennan County, Texas; TYPE OF FACILITY: cattle transport truck that discharged fuel; RULES VIOLATED: 30 TAC §327.5(c), by failing to submit written information describing the details of a discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 days of the discovery of the reportable discharge or spill; PENALTY: $1,100; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Van Der Horst U.S.A. Corporation; DOCKET NUMBER: 2006-2186-IHW-E; TCEQ ID NUMBER: RN100574235; LOCATION: 419 East Grove Street, Terrell, Kaufman County, Texas; TYPE OF FACILITY: electroplating facility; RULES VIOLATED: 30 TAC §335.69(d)(1) and (2) and 40 Code of Federal Regulations (CFR) §262.34, by failing to ensure containers of hazardous waste are always closed during storage, except when necessary to add or remove waste. Also failing to label or mark containers with either the words hazardous waste or other words that would identify the contents of the container; 30 TAC §335.6(a) and (c), by failing to update the Notice of Registration and notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities; 30 TAC §335.69(a) and 40 CFR §262.34(a), by failing to ensure that hazardous waste is not accumulated on-site for more than 90 days without a permit; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations; and 30 TAC §335.323 and TWC, §5.702, by failing to pay outstanding hazardous waste generation fees for TCEQ Financial Account Numbers 0300195G, 23703199 and 0500993 for Fiscal Year 2006; PENALTY: $44,685; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200804635
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2008

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 6, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts

or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 6, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Name Investment, Inc. dba Highway Stop; DOCKET NUMBER: 2005-0868-PST-E; TCEQ ID NUMBER: RN101435600; LOCATION: 11102 Interstate Highway 37, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and (c)(1), by failing to provide a method, or a combination of methods, of release detection which were capable of detecting a release from any portion of the UST system which contains regulated substances including tanks, piping, and any other underground ancillary equipment; 30 TAC §334.48(c), by failing to conduct proper inventory control procedures; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip the UST system with proper overfill prevention equipment; PENALTY: $7,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200804636
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2008

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Division 1, Beaumont-Port Arthur Ozone Nonattainment Area Major Sources; §117.140 and §117.145; Division 3, Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources; §117.340 and §117.345; and Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas; Division 1, Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources; §117.2035 and §117.2045 and to the state implementation plan under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency concerning state implementation plans.

The proposed rulemaking would allow for an output-based monitoring alternative to the fuel flow meter requirement for stationary internal combustion engines and gas turbines at major sources of nitrogen oxides in the Beaumont-Port Arthur ozone nonattainment area and at major and minor sources of nitrogen oxides in the Houston-Galveston-Brazoria ozone nonattainment areas. The proposed changes would add monitoring flexibility for owners and operators of engines and turbines and is consistent with an option currently allowed under Chapter 117 for similar units in the Dallas-Fort Worth ozone nonattainment area.

Public hearings for the proposal rulemaking and SIP revision have been scheduled in Houston on September 30, 2008, at 7:00 p.m. at the Houston-Galveston Area Council, Conference Room B, 3555 Timmons Lane and in Beaumont on October 1, 2008, at 1:00 p.m. at South East Texas Regional Planning Commission, 2210 Eastex Freeway. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearings to assure that enough time is allowed for every interested person to speak. There will be no discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Joyce Spencer, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Duron, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-008-117-EN. Comments must be received by October 6, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ray Schubert, Air Quality Planning Section, at (512) 239-6615.

TRD-200804596
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 25, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of August 13, 2008 through August 26, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

COMMODORE COVE IMPROVEMENT DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010798001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 711 Anchor

Drive, approximately two miles southeast of the intersection of County Road 792 and Farm-to-Market Road 523 in Brazoria County, Texas.

CITY OF BRYAN has applied for a renewal of TPDES Permit No. WQ0010426003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 3000 feet west of Farm-to-Market Road 2818 and approximately 4 miles southeast of State Highway 21 in Brazos County, Texas.

CITY OF BRYAN has applied for a renewal of TPDES Permit No. WQ0010426004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located approximately 8,500 feet south-southeast of the intersection of Texas Highway 47 at Leonard Road (Farm-to-Market Road 1688) and adjacent to Thompsons Creek near its confluence with the Brazos River in Brazos County, Texas.

CITY OF CISCO has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014877001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. This facility was previously permitted under TPDES Permit No. 10424-001 which expired March 01, 2007. The facility is located approximately 1,900 feet east and 4,500 feet north of the intersection of U.S. Highway 183 and U.S. Highway 80 in Eastland County, Texas.

CITY OF DANBURY has applied for a renewal of TPDES Permit No. WQ0010158001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 504,000 gallons per day. The facility is located at 1600 Avenue L, approximately 500 feet southwest of the intersection of 6th Street and Avenue L and approximately 800 feet southeast of 9th Street and Avenue L in Brazoria County, Texas.

CITY OF EDEN has applied for a major amendment to TPDES Permit No. WQ0010081001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 225,000 gallons per day to a daily average flow not to exceed 440,000 gallons per day. The facility is located approximately 2/3 of a mile east of U.S. Highway 83, 2/3 of a mile south of U.S. Highway 87 and immediately north of Harden Branch in the City of Eden in Concho County, Texas. The disposal site is located approximately 6,000 feet west-northwest of the facility.

CITY OF GEORGETOWN has applied for a renewal of TPDES Permit No. WQ0010489006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via surface irrigation of 150-acre golf course through Outfall 002 and the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via Outfall 001. The facility is located approximately 2,000 feet north-northeast of Williamson County Road 190 crossing Berry Creek, approximately 4,250 feet northwest of the intersection of Interstate Highway 35 and State Highway 195 in Williamson County, Texas. The disposal site is located west of the wastewater treatment facility.

CITY OF LA MARQUE has applied for a renewal of TPDES Permit No. WQ0010410003, which authorizes the discharge of treated domestic wastewater (OR filter backwash effluent from a water treatment plant) at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located adjacent to Mahan Park approximately 1,300 feet south of the intersection of Woodland and Lake Streets, on North Bank of Highland Bayou in Galveston County, Texas.

CITY OF SAN BENITO has applied for a major amendment to TPDES Permit No. WQ0014454001 to authorize an additional outfall (Outfall 002) for the discharge of treated effluent not to exceed 3,750,000 gallons per day via pipeline to a constructed wetland; thence to an unnamed drainage ditch; thence to Arroyo Colorado Above Tidal in Segment No. 2202 of the Nueces-Rio Grande Coastal Basin. The wetland treatment system will serve as a wastewater pollutant reduction component of the Arroyo Colorado Watershed Protection Plan. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,750,000 gallons per day. The combined flows from Outfall 001 and Outfall 002 shall not exceed the permitted flow of 3,750,000 gallons per day. The facility is located 1/4 mile southeast of the intersection of Farm-to-Market Road 509 and Arroyo Colorado in Cameron County, Texas.

CITY OF SAN JUAN has applied for a major amendment to TPDES Permit No. WQ0011512001 to authorize the addition of Outfall 002 for the discharge of treated domestic wastewater at a volume not to exceed 200,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 1.9 miles south of U.S. Highway 83 Business Route at the south end of the San Antonio Road, at 201 West Hall Acres Road, in the City of San Juan in Hidalgo County, Texas.

CITY OF SLATON has applied for a renewal of Permit No. WQ0010284001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day via surface irrigation of 192 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.1 miles northeast of the intersection of State Highway-Loop 251 and Farm-to-Market Road 41, 0.9 miles north-northeast of the intersection of Farm-to-Market Road 3440 and Golf Course Road in Lubbock County, Texas.

CITY OF TEXAS CITY has applied for a renewal of TPDES Permit No. WQ0010375001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,400,000 gallons per day. The current permit authorizes the marketing and distribution of Class A sewage sludge. The facility is located approximately one mile north of State Highway Loop 197 and four miles east of State Highway 146, in the northeast portion of the City of Texas City at 3901 Bay Street Extension in Galveston County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 358 has applied for a major amendment to TPDES Permit No. WQ0013296002 to authorize less stringent effluent limitations for Copper. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 19855 Cypresswood Drive, approximately 1,500 feet north of U.S. Highway 290 and 2,700 feet west of Mueschke Road in Harris County, Texas.

MARKHAM MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010580001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 500 feet southwest of the intersection of Farm-to-Market Roads 1468 and 2431 in Matagorda County, Texas.

NORTHPARK BUSINESS CENTER LTD. has applied for a renewal of TPDES Permit No. WQ0014091001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,800 gallons per day. The facility is located approximately 0.9 mile east-northeast of the intersection of State Highway Loop 494 and Northpark Drive, approximately 1 mile east-southeast of the

intersection of U.S. Highway 59 and West Knox Drive in Montgomery County, Texas.

RHOM AND HAAS COMPANY which operates a facility that manufactures specialty monomers and biocides, has applied for a renewal of TPDES Permit No. WQ0002500000, which authorizes the discharge of storm water and steam condensate on an intermittent and variable basis. The facility is located on the east side of Bay Area Boulevard, approximately 1/4 mile south of the intersection of Bay Area Boulevard and Fairmont Parkway in the City of La Porte, Harris County, Texas.

SAN JACINTO RIVER AUTHORITY has applied for a renewal of Permit No. WQ0011401001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,800,000 gallons per day. The facility is located north of Sawdust Road, approximately two miles west of Interstate Highway 45 and twelve miles south of the City of Conroe in Montgomery County, Texas.

SARTOMER COMPANY INC. which operates Sartomer Plant, a synthetic resins manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003207000, which authorizes the discharge of cooling tower blowdown and storm water runoff on an intermittent and flow variable basis via Outfall 001, and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 17335 Wallisville Road approximately 4500 feet east-northeast of the intersection of Wallisville Road and Sheldon Road, Harris County, Texas.

TEXAS A&M UNIVERSITY which operates Brayton Fire Training Field, has applied for a renewal of TPDES Permit No. WQ0002585000, which authorizes the discharge of treated process water from stationary blaze pads, storm water, and groundwater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located on Nuclear Science Road, approximately 0.5 mile south of the intersection of Farm-to-Market Road 2347 and Nuclear Science Road, adjacent to Easterwood Airport, in the City of College Station, Brazos County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE which operates the Terrell Cannery, a vegetable canning plant, has applied for a renewal of TPDES Permit No. WQ0002952000, which authorizes the discharge of vegetable wash water, retort water, can cooling water, and washdown water at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The facility is located at the Terrell Prison Unit, at the western terminus of Farm-to-Market Road 655 and on the east side of the Oyster Creek approximately four miles southwest of the City of Rosharon, Brazoria County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200804659
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 19, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Asad Ali Corporation dba Sunrise Food Mart; SOAH Docket No. 582-08-3218; TCEQ Docket No. 2005-2000-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Asad Ali Corporation dba Sunrise Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200804661
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2008

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 30-Day Pre-Election Report due February 4, 2008

James P. 'Patriot' Dillon, P.O. Box 878, Liberty Hill, Texas

Deadline: 8-Day Pre-Election Report due May 2, 2008

June Perdue Jenkins, Texas Democratic Women of Collin County, 5421 Palace Dr., Richardson, Texas

Deadline: Personal Financial Statement due April 30, 2008

Armando Elizarde, P.O. Box 2934, Harlingen, Texas 78551

Deadline: Personal Financial Statement due June 30, 2008

Gerald Alley, 606 Loch Chalet Court, Arlington, Texas 76012

Woodrow Michael Brimberry, 2308 Farrington Court, Cedar Park, Texas 78613

Richard H. Collins, 3131 McKinney Ave., Ste. 720, Dallas, Texas 75204

Byron E. Miller, 135 Paso Hondo, San Antonio, Texas 78202

Lawrence M. Sampleton, Jr., 2900 Bunny Run, Austin, Texas 78746

TRD-200804525
David Reisman
Executive Director
Texas Ethics Commission
Filed: August 21, 2008

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 5, 2008.

The proposed amendment will revise the reimbursement methodology for Medicaid Hospice room and board when the recipient resides in a nursing facility. Specifically, it will change the methodology for assigning a payment level to each individual receiving care. The amendment will replace references to the Texas Index for Level of Effort (TILE) case mix classification system with references to the Resource Utilization Groups (RUG) classification system established by the state and the Centers for Medicare and Medicaid Services (CMS).

The proposed amendment is estimated to result in additional annual aggregate expenditures of $1,104,809 for the remainder of federal fiscal year (FFY) 2008 (September 1, 2008, through September 30, 2008), with approximately $669,293 in federal funds and approximately $435,516 in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of $13,257,710, with approximately $8,031,521 in federal funds and approximately $5,226,189 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804642
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 26, 2008

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-014, Amendment Number 818, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective July 1, 2008.

The purpose of this amendment is to modify current language excluding Census Bureau wages for temporary employment related to census activities from the income used to determine Medicaid eligibility. Previous language specifically excluded wages from temporary employment related to Census 2000 activities. Census activities offer a unique work opportunity for those receiving Temporary Assistance for Needy Families (TANF) and other low-income individuals to earn money while receiving training and developing valuable work skills. This state plan amendment takes advantage of flexibility offered under Medicaid and SCHIP to ensure families' continue to have access to health coverage.

The proposed amendment is estimated to result in no additional annual expenditure.

To obtain copies of the proposed amendment, interested parties may contact Gina Perez by mail at Office of Family Services, Texas Health and Human Services Commission, P.O. Box 85200, mail code 2039, Austin, Texas 78708-5200; by telephone at (512) 206-5061; by facsimile at (512) 206-4556; or by e-mail at Gina.Perez@hhsc.state.tx.us.

TRD-200804662
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 27, 2008

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Texas Department of Housing and Community Affairs

Announcement of the Consolidated Public Hearings Schedule

The Texas Department of Housing and Community Affairs (TDHCA) announces the consolidated public hearing schedule for the *2009 State of Texas Consolidated Plan One Year Action Plan (OYAP); HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) Affordable Housing Needs Score; HOME, HTC and HTF Regional Allocation Formula; HTC Qualified Allocation Plan (QAP) and Rule; TDHCA HOME Program Rule; TDHCA Housing Trust Fund Rule; Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rule; Multifamily Housing Revenue Bond Program Rule; Texas First-Time Homebuyer Program Rule; Community Services Block Grant Rule; the Emergency Shelter Grants Program Rule; the Comprehensive Energy Assistance Program Rule; and the Weatherization Assistance Program Rule.*

These hearings are consolidated to provide the public with an opportunity to more effectively provide comment on the Department's policy and planning documents and a variety of its programs. Copies of all relevant documents may be found on the TDHCA website (www.tdhca.state.tx.us) beginning September 19th, 2008. Hearings will be held at the following times and locations:

September 22nd, 11:00 a.m. (Monday)

HOUSTON

Houston City Hall Annex Chambers

901 Bagby St.

Houston, TX 77002

September 24th, 9:00 a.m. (Wednesday)

AUSTIN

Omni Austin Hotel Southpark

4140 Governor's Row

Austin, TX 78713

September 26th, 11:00 a.m. (Friday)

FORT WORTH

Fort Worth City Hall

2nd Floor Council Chamber

1000 Throckmorton Street

Fort Worth, TX 76102

September 29th, 11:00 a.m. (Monday)

LUBBOCK

South Plains Association of Governments

1323 58th Street

Lubbock, TX 79412

October 1st, 5:00 p.m. (Wednesday)

EL PASO

El Paso City Council Chambers

2 Civic Center Plaza, 2nd Floor

El Paso, TX 79901

October 3rd, 11:00 a.m. (Friday)

BROWNSVILLE

Brownsville City Council Chambers

1001 E. Elizabeth Street, 2nd Floor

Brownsville, TX 78521

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Written comment should be addressed to the Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, TX 78711-3941, or by email at tdhcarulecomments@tdhca.state.tx.us. For more information on these hearings, please contact TDHCA at (512) 475-3976.

TRD-200804672

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: August 27, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of INVESTORS GUARANTY LIFE INSURANCE COMPANY to BERKLEY LIFE AND HEALTH INSURANCE COMPANY, a foreign life company. The home office is in Urbandale, IA.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200804670

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: August 27, 2008

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Correction of Error

The Texas Department of Insurance proposed amendments to 28 TAC §§21.3101 - 21.3105 and new §21.3106 and §21.3107 in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6714). The amendments and new sections concern coverage for acquired brain injury. Due to an error in the agency's document submission, a colon was omitted after the word "not" in §21.3101(c)(2) on page 6720. Subsection (c)(2) should read as follows:

"(2) Nothing in this subchapter requires the issuer of a health benefit plan to provide coverage for services that are not: medically necessary;[,] clinically proven;[,] goal-oriented;[,] efficacious;[,] based on an individualized treatment plan;[,] or provided by, or ordered and provided under the direction of a licensed healthcare practitioner."

TRD-200804674

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Texas Lottery Commission

Instant Game Number 1118 "Texas $50 Million Club"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1118 is "TEXAS $50 MILLION CLUB". The play style is "key number match with multiplier and win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1118 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 1118.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 10X SYMBOL, STAR SYMBOL, $20.00, $25.00, $30.00, $40.00, $50.00, $100, $500, $1,000, $2,000, $10,000 and $ONE MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1118 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
10X SYMBOL	WINX10
STAR SYMBOL	WINALL
$20.00	TWENTY
$25.00	TWY FIV
$30.00	THIRTY
$40.00	FORTY
$50.00	FIFTY

$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$2,000	TWO THOU
$10,000	10 THOU
$ONE MILL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $2,000, $10,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1118), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1118-0000001-001.

K. Pack - A pack of "TEXAS $50 MILLION CLUB" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS $50 MILLION CLUB" Instant Game No. 1118 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS $50 MILLION CLUB" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "10X" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. If a player reveals a "star" play symbol, the player wins all 25 PRIZES INSTANTLY! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 55 (fifty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in

the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No five or more matching non-winning prize symbols on a ticket.

C. The STAR (win all) and 10X (win x 10) play symbols will only appear on intended winning tickets as dictated by the prize structure.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS $50 MILLION CLUB" Instant Game prize of $20.00, $25.00, $30.00, $40.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $40.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS $50 MILLION CLUB" Instant Game prize of $1,000, $2,000, $10,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS $50 MILLION CLUB" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS $50 MILLION CLUB" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS $50 MILLION CLUB" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,480,000 tickets in the Instant Game No. 1118. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1118 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	278,400	12.50
$25	382,800	9.09
$30	348,000	10.00
$40	104,400	33.33
$50	34,800	100.00
$100	50,779	68.53
$500	5,075	685.71
$1,000	3,480	1,000.00
$2,000	870	4,000.00
$10,000	78	44,615.38
$1,000,000	5	696,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1118 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1118, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200804594
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 25, 2008

♦ ♦ ♦

Instant Game Number 1126 "Fantastic 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1126 is "FANTASTIC 5'S". The play style for GAME 1 is "key number match with auto win". The play style for GAME 2 is "row/column/diagonal". The play style for GAME 3 is "key symbol match with auto win". The play style for GAME 4 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1126 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1126.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, X SYMBOL, O SYMBOL, 5 SYMBOL, CROWN SYMBOL, STAR SYMBOL, BELL SYMBOL, MONEY BAG SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, DIAMOND SYMBOL, PENNY SYMBOL, RAINBOW SYMBOL, CLOVER SYMBOL, HORSESHOE SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1126 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
X SYMBOL	
O SYMBOL	
5 SYMBOL	
CROWN SYMBOL	CRN
STAR SYMBOL	STAR
BELL SYMBOL	BELL
MONEY BAG SYMBOL	BAG
POT OF GOLD SYMBOL	PTGD
GOLD BAR SYMBOL	GOLD
DIAMOND SYMBOL	DMD
PENNY SYMBOL	PENNY
RAINBOW SYMBOL	RNBW
CLOVER SYMBOL	CLVR
HORSESHOE SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits

of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1126), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1126-0000001-001.

K. Pack - A pack of "FANTASTIC 5'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FANTASTIC 5'S" Instant Game No. 1126 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FANTASTIC 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 53 (fifty-three) Play Symbols. For GAME 1, if a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "HORSESHOE" play symbol, the player wins 5 TIMES the prize shown! For GAME 2, if a player reveals three "5" play symbols in any one row, column or diagonal line, the player wins PRIZE shown. For GAME 3, if a player reveals three "5" play symbols within a PLAY, the player wins PRIZE shown for that PLAY. If a player reveals two "5" play symbols and a "horseshoe" play symbol within a PLAY, the player wins 5 TIMES the PRIZE for that PLAY! For GAME 4, if a player reveals a "5" play symbol, the player wins the PRIZE shown for that symbol. If a player reveals a "horseshoe" play symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 53 (fifty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 53 (fifty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 53 (fifty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 53 (fifty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. The "HORSESHOE" (win x 5 multiplier) will only appear as dictated by the prize structure.

D. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. GAME 1: No duplicate non-winning prize symbols in this game.

F. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

G. GAME 2: There will be no occurrence of any symbol other than the "5" creating a complete horizontal, vertical or diagonal line.

H. GAME 2: There will be a minimum of four and a maximum of five "5" play symbols in this game.

I. GAME 2: This game may only win one time.

J. GAME 3: There will be many near wins on non-winning tickets that is defined as two matching play symbols within a PLAY.

K. GAME 3: No matching non-winning prize symbols in this game.

L. GAME 3: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

M. GAME 3: No duplicate non-winning PLAYS on a ticket.

N. GAME 3: The "HORSESHOE" (win x 5 multiplier) will only appear on the intended winning 5X PLAY.

O. GAME 4: No duplicate non-winning play symbols in this game.

P. GAME 4: No duplicate non-winning prize symbols in this game.

Q. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "FANTASTIC 5'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FANTASTIC 5'S" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FANTASTIC 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1126. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1126 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	660,800	10.71
$10	708,000	10.00
$15	236,000	30.00
$20	141,600	50.00
$50	88,500	80.00
$100	14,986	472.44
$500	1,416	5,000.00
$1,000	236	30,000.00
$5,000	20	354,000.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1126 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1126, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200804531
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2008

♦ ♦ ♦

Instant Game Number 1134 "$50,000 Treasures"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1134 is "$50,000 TREASURES". The play style is "key symbol match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1134 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1134.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: BALLOON SYMBOL, CABBAGE SYMBOL, CUPCAKE SYMBOL, CANDY

SYMBOL, CAR SYMBOL, MONEY STACK SYMBOL, CHEST SYMBOL, STACKS OF COINS SYMBOL, FORTUNE COOKIE SYMBOL, CROWN SYMBOL, EMERALD SYMBOL, GIFT SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, HOUSE SYMBOL, ROSE SYMBOL, DOLLAR BILL SYMBOL, MOON SYMBOL, NECKLACE SYMBOL, PIGGY BANK SYMBOL, POT OF GOLD SYMBOL, RABBIT FOOT SYMBOL, RING SYMBOL, RAINBOW SYMBOL, 7 SYMBOL, HORSESHOE SYMBOL, SHAMROCK SYMBOL, STAR SYMBOL, SUN SYMBOL, WISHBONE SYMBOL, 10X SYMBOL, KEY SYMBOL, MONEY BAG SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $2,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1134 - 1.2D

PLAY SYMBOL	CAPTION
BALLOON SYMBOL	BALLOON
CABBAGE SYMBOL	CABAGE
CUPCAKE SYMBOL	CAKE
CANDY SYMBOL	CANDY
CAR SYMBOL	CAR
MONEY STACK SYMBOL	CASH
CHEST SYMBOL	CHEST
STACKS OF COINS SYMBOL	COINS
FORTUNE COOKIE SYMBOL	COOKIE
CROWN SYMBOL	CROWN
EMERALD SYMBOL	EMERALD
GIFT SYMBOL	GIFT
GOLD BAR SYMBOL	GOLD
HEART SYMBOL	HEART
HOUSE SYMBOL	HOUSE
ROSE SYMBOL	ROSE
DOLLAR BILL SYMBOL	MONEY
MOON SYMBOL	MOON
NECKLACE SYMBOL	NCKLACE
PIGGY BANK SYMBOL	PIGBNK
POT OF GOLD SYMBOL	PTGOLD
RABBIT FOOT SYMBOL	RBTFT
RING SYMBOL	RING
RAINBOW SYMBOL	RNBOW
7 SYMBOL	SEVEN
HORSESHOE SYMBOL	SHOE
SHAMROCK SYMBOL	SHROCK
STAR SYMBOL	STAR
SUN SYMBOL	SUN
WISHBONE SYMBOL	WBONE
10X SYMBOL	10TIMES
KEY SYMBOL	AUTO
MONEY BAG SYMBOL	WINALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $150 or $200.

H. High-Tier Prize - A prize of $2,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1134), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1134-0000001-001.

K. Pack - A pack of "$50,000 TREASURES" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 TREASURES" Instant Game No. 1134 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 TREASURES" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) Play Symbols. If a player reveals a "key" play symbol, the player wins prize shown for that symbol. If the player reveals a "10X" play symbol, the player wins 10 TIMES the prize shown! If the player reveals a "money bag" play symbol, the player wins ALL PRIZES shown! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "10X" (10 times multiplier), the "MONEY BAG" (win all) and the "KEY" (auto win) play symbols will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate non-winning play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. When the "MONEY BAG" (win all) play symbol appears, there will be no other wins on the ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 TREASURES" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $150 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $150 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 TREASURES" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 TREASURES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 TREASURES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 TREASURES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1134. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1134 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	566,400	12.50
$10	802,400	8.82
$15	94,400	75.00
$20	118,000	60.00
$25	94,400	75.00
$50	94,400	75.00
$100	4,720	1,500.00
$150	2,655	2,666.67
$200	1,003	7,058.82
$2,000	472	15,000.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1134 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1134, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200804616
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 26, 2008

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Texas Parks and Wildlife Department

Pre-Solicitation Notice

Construction Manager at Risk Services for 2008 - 2009 Capital Repair Program

This Pre-Solicitation Notice is for informational purposes only.

This is not a request for submission of proposals.

RESPONSES OR OTHER INQUIRIES ARE NOT APPROPRIATE AT THIS TIME.

The Infrastructure Division of the Texas Parks and Wildlife Department (TPWD) intends to issue a Request for Proposal (RFP) for Construction Manager at Risk Services on September 24, 2008 as part of its implementation of the agency's 2008 - 2009 Capital Repair Program.

Detailed information about the requirements and selection process will be provided in the RFP.

Upon issuance of the RFP on September 24, 2008, all solicitation information will be available electronically on TPWD's website: http://www.tpwd.state.tx.us/business/bidops/current_bid_opportunities/construction/ and on the Electronic State Business Daily website at http://esbd.cpa.state.tx.us.

Hard copy documents relating to the issuance of the September solicitation for Construction Manager at Risk will also be available at no charge by calling (512) 389-4442 or by e-mailing a request to contracting@tpwd.state.tx.us.

Solicitation Background

TPWD has assembled approximately 66 capital repair projects into three discrete regional "packages" for the purposes of solicitation and execution to expedite project delivery and to create maximum efficiency and potential cost savings. The projects are organized into three geographic regions that reflect the organization of the Infrastructure Division staff. The Infrastructure Division staff includes project managers, contract managers, planning and design staff, construction managers, inspectors and project accountants. All staff will be active in monitoring these construction projects.

The project list that is included in the solicitation indentifies the three construction packages and the general description of each project within each package. The goal of the solicitation is to award a contract to the most qualified respondent for each geographic region. Any firm may respond to one or more of the packages; however, TPWD does not intend to award more than three contracts in connection with the September solicitation.

TRD-200804615
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: August 25, 2008

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Texas Public Finance Authority

Request for Proposals for Bond Counsel

The Texas Public Finance Authority (the "Authority") is requesting proposals for bond counsel services. The deadline for proposal submission is 5:00 p.m., September 26, 2008.

The Authority's Board of Directors (the "Board") will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request For Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to the Authority. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request For Proposal may be obtained from the Authority's webpage at www.tpfa.state.tx.us or call Paula Hatfield, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-200804625
Kim Edwards
Executive Director
Texas Public Finance Authority
Filed: August 26, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 22, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36050 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipalities of Clint, Texas, and Gonzales, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36050.

TRD-200804627
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 22, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36051 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Windcrest, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36051.

TRD-200804628
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 22, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Timberlake Cablevision, Inc. d/b/a CMA Cablevision for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36052 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of China, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36052.

TRD-200804629

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 25, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 36057 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the Cities of Sherman, Denison, and Ingleside on the Bay, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36057.

TRD-200804630
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 18, 2008, FiberLight, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60736. Applicant intends to reflect a change in service area.

The Application: Application of FiberLight, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36021.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 10, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36021.

TRD-200804598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 25, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 21, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Cordia Communications Corp. for a Service Provider Certificate of Operating Authority, Docket Number 36041 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 10, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36041.

TRD-200804626
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2008

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South East Texas Regional Planning Commission

Request for Proposals

The South East Texas Regional Planning Commission (SETRPC) announces the issuance of Request for Proposals (RFP) #082708. SETRPC seeks to obtain pricing for and procure an integrated telephone system capable of IP, analog and digital endpoints.

The deadline for proposals is September 17, 2008 at 12:00 p.m. SETPRC reserves the right to accept or reject any or all proposals submitted. The only purpose of this Request for Proposal (RFP) is to ensure uniform information in the solicitation of proposals and procurement of services. Neither this notice nor the RFP is to be construed as a purchase agreement or contract or as a commitment of any kind; nor does it commit the SETRPC to pay for costs incurred prior to the execution of a formal contract or purchase order unless such costs are specifically authorized in writing by SETRPC.

Parties interested in submitting a proposal may obtain information by contacting Information Technology Manager, Jeremy Robison at (409) 899-8444 x125. A copy of the RFP may be downloaded from the SETRPC website at **http://www.setrpc.org.**

TRD-200804673
Shaun Davis
Executive Director
South East Texas Regional Planning Commission
Filed: August 27, 2008

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Stephen F. Austin State University

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with Point A Media, 510 E Pilar St., Nacogdoches, Texas 75961. The original contract was

in the sum of $25,000. The contract will be renewed beginning on the date of the final signature and will continue for a period of one year, with a total amount not to exceed $40,000.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Diana Boubel, Director of Purchasing & Inventory, Stephen F. Austin State University, P.O. Box 13030, SFA Station, Nacogdoches, Texas 75962; email: dboubel@sfasu.edu; phone (936) 468-4037.

TRD-200804584
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 22, 2008

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

Kimble County, Texas, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at Kimble County Airport during the course of the next five years through multiple grants.

Current Project: Kimble County. TxDOT CSJ No.: 0907JNCTN. Rehabilitate apron; rehabilitate parallel and stub taxiways; rehabilitate and mark Runway 17-35; and rehabilitate turnarounds at Kimble County Airport.

The HUB Participation goal for the current project is 10%. The TxDOT Project Manager is Charles Graham.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate and mark Runway 17-35, Stub Taxiway, and Apron

2. Rehabilitate apron

Kimble County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Kimble County Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.txdot.gov/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 26, 2008, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff and local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at http://www.txdot.gov/services/aviation/consultant.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Charles Graham, Project Manager.

TRD-200804671
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: August 27, 2008

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200804618

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 26, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).